SELECTIONS

FROM THE

RECORDS OF THE GOVERNMENT OF INDIA,

HOME DEPARTMENT.

No. CLV.

CORRESPONDENCE REGARDING THE LAW OF LAND-SALE.

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Extract from the Proceedings of the Government of India in the Home Department (Judicial), Nos. 9—608 to 9—618, under date Simla, the 27th May 1879.

Read the Volume of Selections from correspondence in the Home Department regarding the law of land sale and other matters connected with the condition of the agricultural peasantry in the Deccan and other parts of India.

RESOLUTION.

Shortly after the mutiny of 1857-58, the Secretary of State (Lord Stanley) drew attention to the change worked by the multiplication and increased powers of the civil courts among the landholding and agricultural community. He observed that the legislation of 1831, which enlarged the powers of Munsifs (petty civil Judges of the first instance), had greatly promoted the rapid transfer of landed property from old to new hands. He pointed out that the disturbances of 1857-58 in Northern India had shown that such changes of ownership were disliked by the tenantry, and might impair the loyalty and good will of the great proprietary body of India. While fully recognising the impolicy of putting restrictions upon the ready transfer of property, Her Majesty's Government considered that the circumstances were such as to call for the adoption of palliative or remedial measures; and Lord Stanley desired the early attention of the Government of India to the matter.

2. In the year 1859 a series of valuable and interesting opinions were received from the Government of, and from selected officers in, the North-Western Provinces on the subject of Lord Stanley's despatch. The Lieutenant-Governor (Sir George Edmonstone) and some of his officers (notably Mr. F. B. Pearson) were opposed to the imposition of restrictions on the sale of land in satisfaction of debts. Sir William Muir and Mr. F. O. Mayne were in favour of restricting in different ways the power of the civil courts to execute decrees for debt against landed property. Sir John Strachey,

while admitting the existence of evils under the then system held that worse evils might follow if a remedy was attempted by imposing restrictions on the sale of land. He considered that the civil courts ought to be improved, and that the revenue system ought to be rendered less unbending; but he pointed out that no reform of the courts would alone meet the evil. He advised that the subordinate civil courts should have no power to order attachment or sale of immoveable property; he suggested the establishment of agricultural banks in every district, under the control of Government, for the purpose of making loans to agriculturists and he expressed his hope that some day we should see in India, "among other reforms, the establishment of courts of conciliation, whose special function it would be to preserve the people from any litigation at all, except that which was really unavoidable".

3. Act VIII. of 1859, the earliest Code of Civil Procedure, had been passed while the discussion of Lord Stanley's despatch was going on; and some of the North-Western Provinces officers had pointed hopefully to Sections 194, 243 and 244 of that Code, which authorised civil courts to order the amonnt of a decree to be paid by instalments, and to postpone the sale of land under certain conditions. When the Civil Procedure Code was extended to the Non-Regulation Districts of Oudh, the Central Provinces, and the Punjab, certain provisoes were added to the Code, whereby no sale of landed property in execution of money-decree could take place without the previous sanction of certain superior judicial authorities in each case. As the Code of Civil Procedure had been the outcome of many years' discussion, and as it was without doubt infinitely superior to the laws or system which it superseded, the new Code was left to its operation for some years, without any further change in such of its provisions as related to the execution of decrees. There can be no doubt but that the working of this Code, together with other reforms in the local Courts and the local Bars, has produced great and beneficial change in the administration of civil justice throughout India.

4. In 1870 the question of the law of land sale again came before the Government of India, because the Judges

of the Punjab Chief Court felt doubts as to the legality of the Punjab Procedure, whereby under the provisoes to the Civil Procedure Code (see last foregoing paragraph) the sale of land in execution of decree for debt had been practically prohibited in the Punjab. In other Non-Regulation Provinces the provisoes had been differently worked, and sales of land in execution of money-decrees had been permitted. The Punjab Government and many of their chief officers were opposed to any relaxation of the procedure that had been adopted in the Punjab, and declared their opinion that "the absolute sale of hereditary or joint-acquired property in land in execution of decree should be prohibited, and that no temporary alienation of land under Section 244 of the Code of Civil Procedure should exceed twenty years". The Judges of the Chief Court continued to act on the provisoes as previously interpreted in the Punjab; but, feeling doubts as to the legality of such a course, they asked that "this pressing question might soon be settled by legislative enactment".

5. In September 1870 the Government of India invited all the Local Governments in India to report upon the working of Sections 243-44 of the Civil Procedure Code, and on the effect which those sections had on the sales of land under decrees of civil courts. The replies to that circular are printed in the accompanying Volume of Selections; they contain many interesting statements of facts and opinions; and their outcome, so far as concerns the special question put in the Government circular, is that Sections 243-44 of Act VIII. of 1859 had been practically inoperative. It was represented, however, that further powers might advantageously be given, whereby executive officers, acting with the consent of the courts, might interpose to prevent the absolute sale of lands in execution of money-decrees, and the absolute ruin of landholders by such sales.

6. While this correspondence was going on, a petition was presented to the Governor General in Council by certain zemíndárs of the Allahabad District, who complained of the action of the civil courts on their class, and recommended certain specific remedies. Among the proposals strongly urged by these petitioners was the re-enactment of the old laws against usurious interest. Shortly afterwards the

question of restricting the sale of ancestral landed property in the Central Provinces formed the subject of Minutes by the Chief Commissioner (Mr. Morris) and some of his officers, who were then considering a draft "Tenancy Code" for those Provinces.

7. The opinions and recommendation recorded between 1870 and 1874 were under the consideration of the Government of India in 1874; and formed the subject of a Minute by Sir Arthur Hobhouse, which will be found at page 408 of the accompanying Volume of Selections. Sir Arthur Hobhouse suggested that if the facts were as stated in these papers, "sensible Judges, armed with a large power of moulding improvident bargains, and strengthened by a usury law in the background, might administer" a palliative to the evils which were said to exist. The final disposal of the matter was postponed by His Excellency the Governor General (Earl Northbrook) until the report of the Deccan Riots Commission should be received, because it was understood that the Commission were then enquiring closely into the relations between village money-lenders and the peasantry of the Deccan, and into the results, social and political which flowed from those relations.

8. Meanwhile, the Code of Civil Procedure came under revision. The facts and opinions contained in the papers which form the accompanying volume, and also some* of the results of the enquiries by the Deccan Riots Commission, were considered by the Select Committee on the Bill. And the result of such consideration was that Act X. of 1877 (the revised Code of Civil Procedure) contained provisions for the protection of agricultural debtors, and for restricting the sale of land in execution of money-decrees thus —

Section 266, exempting from attachment in execution of decree—

(*b*) implements of husbandry and cattle of agriculturists;

(*c*) the materials of an agriculturalist's house or farm buildings.

* Though the Commission's report was not issued, some of the papers published with that report had reached the Government of India in a private shape.

Section 287, requiring the court ordering sale of property in execution of decree to specify—

(*c*) any incumbrance to which the property is liable;

(*e*) every other thing which the court considers material to enable the purchaser to judge of the value of the property.

Section 291, permitting the officer holding a sale in execution of decree to postpone such sale, if he see fit, provided that he record his reasons for such suspension.

Section 305, empowering the court to postpone sale of land to enable the judgment-debtor to raise the amount of the decree against him.

Section 320, empowering the Local Government to prescribe rules for transferring to the Collector the duty of executing decrees in which land, or interest in land, is to be sold.

Sections 321-22, empowering the Collector, when execution of such decrees has been transferred, to put a reserved price on the property, and to take certain other steps in the interest of the judgment-debtor to save the whole or part of the property from permanent alienation.

Section 326, empowering the court to authorise the Collector to stay public sale of attached land.

Section 327, empowering the Local Government to make special rules for any local area imposing conditions (or restrictions) in respect of the sale of any class of interests in land in execution of money-decrees, where such interests are so uncertain and undetermined as to make it impossible to fix their value.

All these sections were enacted in the interests of the classes who own and occupy the land, and whose ignorance or embarrassments often prevent their contending in the law courts on equal terms with their creditors. The sections which established a modified law of insolvency for the interior of the country were also intended for the relief of honest, though improvident, agricultural debtors. The new

Code of Civil Procedure (Act X. of 1877) only came into force in October 1877; and as yet the Government of India has not received reports on the working of these sections. Two Local Governments (Bombay and the Central Provinces) have taken action under Section 327 restricting the sales of certain classes of landed interests in execution of money-decrees.

9. The latest papers in the volume relate to the project of law, which, at the instance of the Bombay Government, and with the approval of Her Majesty's Government, is under preparation for the relief of agriculturists in certain tracts of the Deccan. The Secretary of State has suggested that for other parts of India also the establishment of rural courts of conciliation might be considered; and he has recommended that some finality should be given to the decrees of local courts in petty cases, the money limit of finality varying with the class and calibre of each court. On these points the several Local Governments and High Courts have been invited to advise the Government of India. The accompanying Volume of Selections, with the present Resolution, is forwarded for the information of Local Governments, as it is desirable that they should be in possession of the opinions previously recorded on these topics.

(True Extract.)

C. BERNARD,

Offg. Secretary to the Govt. of India.

To Local Governments and Administrations.

CORRESPONDENCE REGARDING THE LAW OF LAND-SALE.

No. 4 (Judicial), dated East India House, London, the 25th January 1859.

From—Her Majesty's Secretary of State for India.

To—The Right Honourable the Governor General of India in Council.

My attention has again been directed to the subject of the disturbance by former proprietors of the rights in real property acquired by purchasers at sales made in execution of the decrees of the civil courts which is referred to in paragraphs 4 to 7 of the Public despatch of the Court of Directors dated 4th August, No. 113, 1858, and for the redress of which an Act No. XX. of 1858, passed by the Legislative Council of India, received the assent of the Governor General on the 18th May last.

2. The operation (with partial exceptions founded on family usages) of a law of equal succession, which in the case of ancestral property admits of no modifications by the exercise of a power of testamentary disposal in respect of proprietary rights in the soil (and such is the case wherever the succession to real property is regulated by the doctrine of the Mitákshara), has led in some instances to the extensive sub-division of landed estates, and in others to the joint-tenancy of a large number of sharers, and in both to the impoverishment of numerous families which once were considered wealthy. The members of such families unwilling to forego the position which their ancestors held resort to the Native banker; then follows the civil suit, and the sale of the debtor's property in execution of the judgment. A sale of real, and especially of ancestral, property, which either admits a new man to the possession of an old hereditary estate, or what is looked upon with still greater aversion, allows in the instance of a sale of a portion of the property a stranger to enter into coparcenary with a joint undivided family, is not in accordance with Native feelings, nor with the practice which existed under former Governments. The practice introduced under our administration has proved an element of weakness by transferring the property from the old hereditary families, to whom the tenantry were attached, to the mercantile classes, whom, as interlopers, they regard with dislike, and who in times of difficulty, while they look to us for protection, are unable to render us any assistance, or actively to co-operate with the Government authorities in the suppression of disturbance.

3. The difficulties arising from the unrestricted transfer of real property from the hands of the hereditary proprietors to those of new men under the proceedings of our civil courts scarcely admit of any alleviation in regard to past transactions. It is impossible to call upon those whose titles derive their sanction from the law as administered by our courts of justice to surrender all or any portion of the property which they have thus acquired, and no measures, either of legislation or administration, can be permitted, the effect of which shall be to impeach

the rights, or to invalidate the titles which the Government itself has conferred, and which it is bound to uphold.

4. It is possible, however, that the strong partiality for their old hereditary landlords, which during the recent disturbances has been manifested in many quarters by the tenantry of estates sold at public sales, may have given rise to a willingness on the part of auction purchasers to relinquish their purchases in favour of the ejected proprietors on receiving a fair compensation, and it appears to Her Majesty's Government that the district officers in the revenue branch of the administration may properly be instructed to take advantages of such opportunities as may offer of giving encouragement and assistance to parties desirous of coming to some arrangement for restoring the old proprietor to the peaceful enjoyment of his estate, and at the same time securing the auction purchaser from loss.

5. In regard to the future, however, while fully recognizing the impolicy of putting restrictions upon the ready transfer of property, Her Majesty's Government are of opinion that the circumstances are such as to call for the adoption of some palliative measures. The peculiar attachment of the landed proprietors to their hereditary estates, and of the tenantry to their hereditary landlords; the fact that the ousted proprietor almost invariably settles down as a tenant upon the estate which a little before was his own, and thus keeps alive the hostile feelings of the tenants against the person whom he regards as the invader of his property; and the consideration that nothing is so calculated to impair the loyalty and good will of the great and influential proprietary body of India as the direct and constant action of Government institutions in depriving them of their ancient possessions, all combine to make the case one of an exceptional character, and to press upon the Government the consideration of remedial measures, which under a different state of things might not have been called for.

6. It cannot be doubted that the increased powers in respect of suits relating to real property which of late years have been conferred upon the subordinate civil courts have greatly promoted the rapid transfer of such property from old to new hands. It was not until the year 1831 that Moonsiffs were empowered to try any suits but those for "money or other personal property", and up to that time those officers were "strictly prohibited from enforcing their own decisions and from issuing any process or using any coercive means for that purpose" for which an application to a higher authority was necessary. In that and subsequent years the powers of the Moonsiffs were greatly enlarged, and under the law now in force the civil courts of every grade are placed upon the same footing in regard to the description of suits which they are competent to try (subject only to certain pecuniary restrictions) and in regard to the execution of their own decrees. The check imposed by the necessity of a reference to a higher court has been removed, and the number of sales, if I am rightly informed, has lately very much increased in consequence of the exercise

Regulation XXIII., 1814, Section 13, Chapter 1.

Regulation XXIII., 1814, Section XLIV.

by a number of courts in every district of the power of ordering a sale which formerly could be exercised by only one or two. This result is not surprizing. The sale of an estate, or portion of an estate, registered in the Collector's books is the most ready way of enforcing a judgment: it gives the least trouble to both the creditor and the court, and holds out every inducement to both to resort to that mode of satisfying the decree in preference to any other even in the most trifling cases.

7. With reference to the foregoing remarks, the question arises as to the expediency of altering the existing constitution of the Moonsiffs' courts, and of reverting to the system under which they were tribunals for the adjudication of suits only "for money or other personal property", at the same time enlarging, if thought advisable, their jurisdiction in such cases. A further check might be imposed by providing that no process, either for attachment or sale of real property, shall be allowed in cases below a fixed amount, and that in suits exceeding that amount the Moonsiff shall not be competent to issue such a process without the previous sanction of the Judge.

8. I throw out these suggestions for your consideration, and request your early attention to the subjects of this despatch.

No. 571 A, dated Nynee Tal, the 5th June 1860.

From—George Couper, Esq., Secretary to the Government of the North-Western Provinces.

To—The Secretary to the Government of India, Home Department.

From Register, Sudder Court, North-Western Provinces, No. 829, dated 16th May 1859.
From Secretary, Sudder Board of Revenue, North-Western Provinces, No. 291, dated 29th April, and enclosures.
From Commissioner of Meerut Division, No. 17, dated 12th May 1859.
From Commissioner of Agra Division, No. 138, dated 17th May 1859.
From Commissioner of Rohilcund, No. 208, dated 26th May 1859.
From Commissioner of Allahabad, No. 241, dated 14th April 1859.
From Commissioner of Benares, No. 42, dated 1st June 1859.
From Commissioner of Jubbulpore, No. 148, dated 29th April 1859.
From Commissioner of Jhansie, No. 859 R, dated 26th April 1859.
From Judge, Saugor and Nerbudda Territories, No. 61, dated 14th April 1859.
From ditto, Cawnpore, No. 89, dated 27th April 1859.
From ditto, Furruckabad, No. 74, dated 12th March 1859.
From ditto, Bareilly, No. 4, dated 9th May 1859.
From ditto, Shajehanpore, No. 178, dated 22nd April 1859.
From ditto, Mirzapore, No. 56, dated 28th April 1859.
From ditto, Ghazeepore, No. 60, dated 10th May 1859.
From Collector of Moradabad No. 1, dated 19th May, and enclosures.
From ditto, Boolundshuhur, No. 2, dated 12th April 1859.
From ditto, Etawah, No. 58, dated 4th April 1859.
From ditto, Banda, No. 735, dated 25th April 1859.
From ditto, Cawnpore, No. 153, dated 13th May 1859.

In reply to your letter No. 444, dated the 9th March 1859, I am directed to forward the correspondence as per margin in original, together with the accompanying Minute by His Honor the Lieutenant-Governor, on the subject of the unrestricted sale of land in execution of the decrees of the civil courts.

The return of the original enclosures is requested.

Minute by the Honourable G. F. EDMONSTONE, *dated Nynee Tal, the 26th May* 1860.

From the Government of India, in the Home Department, No. 444, dated 9th March 1859, enclosing a despatch from the Right Honourable the Secretary of State, No. 4, dated 25th January 1859, on the subject of the sale of land in execution of decrees of the civil courts for debt.

THE despatch from the Right Honourable the Secretary of State relates to the unrestricted sale of real, and especially ancestral, property in execution of the decrees of the civil courts for debt.

2. Her Majesty's Government, while fully recognizing the impolicy of putting restrictions on the ready transfer of property, regard the case as one of an exceptional character, and press upon the Government of India "the consideration of remedial measures".

3. This important question had been to some extent anticipated in paragraphs 4 to 7 of the despatch from the Honourable the Court of Directors, No. 113, dated 4th August 1858, and the Reports which were submitted by the Sudder Court* and the Member of the Legislative Council† for the North-Western Provinces on the requisitions addressed to them will be sent forward.

* No. 1457, dated 24th December 1858.
† No.——, dated 22nd December 1858.

4. But it was not until the receipt of the despatch from the Right Honourable the Secretary of State that means were taken to collect the opinions of the local officers most competent to form a judgment. These have been before me for a much longer period than I could have desired, and I will only express a hope that the extreme importance and difficulty of the question referred for consideration, together with the heavy pressure of duties connected with the administration of these Provinces, will be accepted as a sufficient excuse for the delay which has occurred.

5. I propose, in the first instance, to touch briefly on the subordinate points which claim attention, reserving, until these shall have been disposed of, the remarks which I desire to offer on the main question.

6. The question of Hindoo law, which is raised in the Honourable the late Court's despatch, may be briefly passed over. Lord Stanley, adverting apparently to this, observes that the state of things caused by the operation of the civil courts in the unrestricted transfer of real property from the hands of the hereditary proprietors to those of new men scarcely admits of alteration in regard to past transactions.

7. It is impossible for the Government to countenance any measure, the effect of which shall be to invalidate titles which the Government itself has conferred. That the rights acquired by purchase at public sales have been considered to be unquestionable, and that the precepts of the Mitákshara have not been regarded as barring the alienation of ancestral property by courts of justice is sufficiently proved by the fact that no civil action has ever been brought in our courts to contest

a public sale on that ground. This may have been due in some measure to unacquaintance on the part of those concerned and their advisers with the ancient rescripts in question; but even if the point had been submitted to judicial decision, it seems very improbable that "the proof of necessity", which puts the alleged illegality aside, would have been wanting. The provision of funds for the marriage of a daughter, or for the performance of funeral obsequies, or other observance regarded as equally imperative, could and would always have been urged as the "necessity" for incurring debt, and the obligation of a debt once created, the exception would be established.

8. But, as above remarked, the title conveyed by a public sale has been viewed both by the civil courts and by Hindoos as unquestionable. And if the practice under which the transfer has been considered no less absolute in regard to the rights of heirs than the rights of the debtor has been at variance with any principle of Hindoo law, it is a fair inference, from the absence of all dispute on the point, that the principle itself has become obsolete.

9. On this ground, therefore, there is no valid reason for the interference of Government, and the past must, I think, be held to be irremediable.

10. Lord Stanley, however, in the 4th paragraph of his despatch suggests that the district officers might be instructed "to give encouragement and assistance to parties desirous of coming to some arrangement for restoring the old proprietor to the peaceful enjoyment of his estate, and at the same time securing the auction purchaser from loss".

11. Of all the officers who have been consulted there are but one or two who are disposed to accept this suggestion. Mr. Batten, the late Officiating Commissioner of Rohilcund, "is far from thinking it a hopeless task for the Collectors of districts to attempt amicable arrangements by which timid auction purchasers may get rid of their uncomfortable property, and by which its re-transfer to the old hands may be effected". And Mr. Hume, the Collector of Etawah, states that "compromises of the nature alluded to are by no means uncommon among the Natives themselves". It is his belief that "at least 12 per cent. of landed properties sold by auction find their way back to the original proprietors within three years entirely by private compromise"; and he adds that "in (say) 90 per cent. of cases in which the transfer was not more than from seven to ten years old, in which the lands were still held by the original transferree, and in which the old proprietors had the means to make a fair offer", he "could at once effect a compromise".

12. With these two exceptions there is hardly any difference of opinion as to the hopelessness of such compromises, and the impolicy of attempts being made by the officers of Government to effect them. The general impression is that there is no inclination on the part of purchasers to relinquish the rights which they have acquired, and

such, it seems to me, must be the common feeling. Land is the investment which every capitalist seeks as the safest, and as yielding a fair return. The possession of land is what every native of this country desires, as giving to him a recognized status and a sure influence in the district of his residence. Whatever else may happen to him, his landed property is secure, so long as the easy demands of the Government continue to be punctually liquidated, and it remains as the heritage of his children.

13. But it is not only the disinclination of the auction purchasers that must be overcome. The ejected proprietor must have the means to pay a sum which shall secure the auction purchaser from loss. This is a condition which even Mr. Hume, sanguine as his expectations are, has not overlooked, and it is a condition which I apprehend could be in very rare instances fulfilled. The ruin of the hereditary proprietor is complete before his land is sold. The unrelenting action of the civil courts ejects him from his property, and reduces him to the condition of a mere tenant-at-will. In ninety-nine cases out of a hundred he is rack-rented, and unable to take to other than agricultural occupations: he has no means of improving his circumstances, and having no tangible security to offer, he has no credit, that he should be able to borrow, or, if he should perchance be able to take up money for the recovery of his ancestral property on the hypothecation of that property itself, he would do so only on terms which would very shortly throw him back into his old position.

14. There may be in the Etawah District special circumstances which make auction purchasers willing to surrender their newly-acquired rights; but I must accept the almost universal testimony on the other side as proving that auction purchasers generally are not so inclined, and express my belief to be that the restoration of the old proprietors "to the peaceful enjoyment of their estates" cannot be looked for by reason of any amicable settlement between them and the parties who have come into possession of their ancestral rights.

15. Whether such compromises could be effected with the assistance of the district officer is another question. It is possible that in cases in which the ousted proprietor possesses the means to satisfy the demands of the auction purchaser the influence of the Collector might not be unavailing; but I strongly deprecate any action of this kind on the part of the Government.

16. I am persuaded that any such interposition would be construed into a desire on the part of the Government to repudiate the titles which have been acquired under the operation of its own laws, and I can hardly think, having regard to the suspicious and sensitive nature of the people, that such an inference would be unreasonable.

17. If the auction purchaser is willing to surrender his property, and the former owner is desirous to recover it, and has the means of paying an equitable compensation, it is not to be supposed that the two parties cannot come to an amicable composition. The transaction is a

transaction between man and man, and both parties being agreed as to the issue, an equitable bargain, or in any event a bargain with which both parties are content, will be struck. What need then of the intervention of the officers of Government, except to force an issue which the Government desires to effect. This is the question that will be asked, and it will be answered by every auction purchaser in one way only. Without any doubt he will be impressed with the belief that it is the wish and the intention of Government to coerce him into a surrender of his purchased property into the hands of the ejected owners; and in numerous cases this understood wish will be construed into an order: the property will be given up on compensation settled by the district officer, and the man will be unalterably convinced that he has been swindled out of his property. And even if the auction purchaser should give the Government credit for better motives and juster intentions, he would not unfrequently be induced to relinquish his property by the apprehension, if not the certainty, that the encouragement given to the old proprietors would intensify their opposition, and make the profitable management of the estate impossible.

18. So much in regard to past transactions.

19. The possibility of *future* remedy is a more important branch of the enquiry suggested in Lord Stanley's despatch.

20. In the 6th and 7th paragraphs of that paper there are three suggestions, having for their object the prevention or rather the diminution in the number of sales in execution of decrees for debt:

1st.—That the Moonsiffs be restricted to the trial of suits for "money or other personal property" as before 1831.

2nd.—That the Moonsiffs be "prohibited from enforcing their own decisions", whereby the permission of the Judge to a sale of real property in execution would be made necessary.

3rd.—That "no process, either for attachment or sale of real property, shall be allowed in cases below a fixed amount".

21. I do not see how the object in view is to be reached, or even promoted, by the first of the measures suggested. Whether, with reference to distinct considerations, it is desirable to restrict the powers of the Moonsiffs as proposed, is a separate question which does not call for discussion here. But it seems obvious that the adjudication upon a contested claim to proprietary right in land is a very different thing from the compulsory alienation of such right in execution of a money decree, and that the withdrawal of the authority to make adjudication on such claims cannot have the least effect in reducing the number of sales for the realization of judgment debts.

22. In regard to the second, I am compelled to dissent from the high authority of the Sudder Court, who advocate it, to the extent at least of requiring that no sale of real property shall be made in execution of decree for debt, save with the previous permission of the Judge.

One of two consequences, it seems to me, would inevitably follow: either the Judge, being made responsible for the issue, would feel it incumbent upon him to satisfy himself as to the justice of the Moonsiff's decision by a laborious examination of the record, or a more laborious re-investigation of the claim, and even then he would be at a loss (the law remaining unaltered) as to the principle which should guide him in determining whether sale of real ancestral property should be permitted or not. Or the reference would be perfunctorily considered, and permission to sell would be given or withheld, as a matter of course, according to the individual views and tendencies of the referee, a distinction probably being for the most part observed between ancestral and acquired property.

23. Much additional labour would be thrown upon the Judge if he were required to examine each case thoroughly and himself to direct the several processes to be observed in execution; and after all the law being unaltered, the ultimate issue would probably be the same. And if no such obligation were to rest on the Judge, the previous reference to him would be nugatory.

24. There may be other reasons perhaps, as indicated in Mr. Reade's Minute, for requiring that the Moonsiffs, instead of addressing their precepts direct to the Collector, should make the European Judge the channel of communication; but this practice would not, in my opinion, tend in any material degree to reduce the number of sales of real property in execution of decree, and that appears to be the sole object with which the suggestion is offered by the Right Honourable the late Secretary of State.

25. The third innovation appears to me inadmissible. I cannot perceive upon what principle the prohibition of sales of real property for the realization of small debts, and the allowance of them in execution of decrees of court for large amounts, can be defended. The interest of the judgment-creditor in the one case may be just as important relatively to his means as in the other, and though it must be admitted that the sale of real property for debt—at all times a great evil in this country—is even more to be deprecated in the case of small debts, where the purchaser would ordinarily enter into a co-parcenary with a joint undivided family, I cannot think that an equitable remedy is to be found in an unequal operation of the law. In all cases the same process of execution should be allowed.

26. Having thus noticed, as I proposed, the subordinate points which are suggested for consideration in these papers, I proceed to place on record the opinion which, after much consideration, I have formed on the main question.

27. In the papers which will accompany this Minute will be found a great variety of opinions. Some officers advocate the absolute and unqualified prohibition of the sale of lands (whether ancestral or acquired) in execution of decrees for debt. Others strongly oppose the imposition of any restrictions whatever on such sales. Others (and

they form a large majority) are in favour of intermediate process being allowed, such, *e. g.*, as temporary transfer of farm for a limited period of years, as now preferentially enforced in the realization of the land revenue.

28. I must confess that two or three years ago I should have been disposed rather to agree with those who would hold land entirely exempt from sale in execution of money decrees than with any other class; but more recent experience, gained in a larger sphere of action, and further reflection have tended very materially to alter my views.

29. It can hardly be contended that to sell the real property of a debtor for the recovery of a debt which he is unable otherwise to liquidate, or which he wilfully neglects to satisfy, is in the abstract unjust. The obligation of a debt cannot be denied, and viewed in the abstract, there is no reason why he who has incurred it should not be held responsible in his real property as well as in the goods and chattels of which he may be possessed. In point of fact, it seems to me that no distinction can be equitably made between the public and private creditor, and that, while sale of proprietary right in land for realization of the Government revenue is allowed, the like process in satisfaction of a judgment-creditor's dues cannot be absolutely denied.

30. The objections made to such alienations in this country rest apparently on political and economical grounds.

31. The objections seem to be—

1st.—That the practice not being in accordance with Native feeling, nor with the customs of Native Governments, produces discontent, and impairs the loyalty and good will of the old hereditary families.

2nd.—That under its operation these influential families are supplanted by interlopers of the mercantile class, who are viewed with dislike by the tenantry, and in times of difficulty are unable to aid the Government in the suppression of disturbances.

3rd.—That indebtedness is encouraged among the people by the ready and adequate security which the land offers.

32. Others may be stated, but these are the principal objections.

33. Now it cannot be denied that during the disturbances of 1857-58 the auction purchasers of landed estates in these Provinces were generally ejected from the possession of their acquired rights by the former proprietors, and from this the discontent and disloyalty of the latter may be inferentially ascribed to the "direct and constant action of Government institutions in depriving them of their ancient possessions". But, on a wider view, it must be admitted that the forcible extrusion of the interloping purchasers could not have been attributable to the operation of this cause only. For in Bengal the practice which it is sought to condemn prevails at the least to the same extent as in these Provinces, while sales for realization of revenue, which

are no less opposed to Native feeling than sales in execution of decrees, are much more absolutely and relentlessly carried out than here; yet, whatever the natural dissatisfaction arising from the alienation of ancestral lands, the loyalty and the good will of the people were not impaired; or, to speak more precisely, there was no overt manifestation of disloyalty among the people of Bengal Proper. *That* was confined to Behar, the people of which are of the same classes, character, and creed, and have the same customs as those found in these Provinces and Oudh.

34. Again, to take an instance the other way, there is no part of the country where disturbances were more universal, or were more indubitably traced to the resident population, or where disorder continued so long prevalent, as the districts of the Jhansie and the Jubbulpore Division; and yet in no districts of those divisions, Humeerpore alone excepted, is there any recognized right of property in the land, and of course no sale of rights in land, whether for realization of revenue, or in execution of civil decrees, has ever occurred. Those districts were first as seriously and generally disturbed as the districts of Banda and Humeerpore, where the practice in question does prevail; and this is all the more remarkable, because many of the landholders in the Jubbulpore and Jhansie Divisions, besides enjoying exemption from process against their lands in satisfaction of their debts, hold on privileged tenure known as "oobaree", and pay a mere quit rent.

35. It seems to me therefore that, however true it may be in theory, that the loyalty and good will of the people must be impaired by "the direct and constant action of Government institutions in depriving them of their ancestral possessions". The events of 1857-58 do not justify the inference that the disturbances in these Provinces were aggravated by the operation of that cause. The restraints of law and authority were withdrawn: the prevailing impression, I believe, to have been that our rule was extinguished, and just as the viler classes of the population took to indiscriminate plunder and violence, so the old proprietors took the opportunity of resuming possession of what had ceased to be their property, only under the execution of a law and a system which were in complete abeyance, and, in their belief, had come to an end.

36. The second proposition is one that can hardly be denied. It is certain that the old hereditary landholders do exercise an influence in their own villages and in their neighbourhood such as the new men belonging to the mercantile classes can seldom acquire, and that they are consequently better able to support the Government in time of difficulty. In a political sense, therefore, it is for the interest of Government to protect the old hereditary proprietors in the possession of their ancestral estates, and to maintain in their integrity the co-parcenary communities which are found, more or less, in all the districts of these Provinces.

37. But the question arises whether the Government is warranted in working out a political end by legislation, the justice of which, as it seems to me, can hardly be defended; and this question, I apprehend, can be answered in one way only. If it be a true and a just principle that the whole of a man's property is liable for his *boná fide* obligations, I do not see how the Government can, with propriety, violate that principle, and deprive creditors of the ultimate security for recovery of their loans, in order that the hands of the executive may be strengthened.

38. Again, whether, in an economical point of view, the transfer, which is gradually going on, of lands into the hands of capitalists, is an unqualified evil, must be doubted. In theory, at least, it must be held to be beneficial to the interests of agriculture and commerce, and to the general prosperity of the country; and many instances I have little doubt could be cited in which the improved management and the larger resources of an intelligent and enterprizing capitalist have produced very satisfactory results. "There can be little doubt", as Mr. Strachey says, "that the new proprietors are generally men of greater wealth and intelligence than their predecessors. The greatest possible of evils in any country is, that the proprietors of land should be unable to undertake any works for its improvement, and the curse of landholders impotent for good is doubly heavy in a country which is almost entirely an agricultural one".

39. Passing on to the third proposition, I must express my belief to be that, were the sale of lands for recovery of debt absolutely prohibited, there would be no diminution of indebtedness among the people. The only effect would be greater recklessness on the part of borrowers and greater rapacity on the part of the money-lenders. In the Saugor and Nerbudda territories (Jubbulpore), where the land is not liable to process of attachment and sale, the pecuniary embarrassments of the people are said to be excessive beyond comparison, greater than those of the landholders in these Provinces. There, to use Mr. Reade's words, "recklessness and dishonesty have no bounds. There is no sense of liability. Whatever may be the terms of a loan, they are accepted. The tenure of the land is safe, so long as the Government lien is discharged. The creditor cannot oust, and, sooner or later, is glad to make a compromise. Thus capital is expended on personal gratification. Agricultural enterprize, if it does not recede, does not pass over traditionary bounds. There is no improvement, no progress".

40. In the District of Neemuch, too, where similarly proprietary right in the land is not recognized, the same state of indebtedness among the landholders obtains, and these two instances afford the strongest possible presumption that, were the alienation of land for recovery of debt put a stop to, there would not be one debtor the less among the landholders of these Provinces. They would borrow, nevertheless, but at more exorbitant rates of interest than even now are extorted from them.

41. The impoverishment and indebtedness of the landed proprietary may be due in some measure to the Hindoo law of equal succession,

and to the consequent minute sub-division of the land, although there are some (*e. g.*, Mr. Strachey) who see no reason to suppose that the land is more sub-divided now than it has been for centuries. But I am inclined to think that this state of indebtedness is much more justly attributable, as Mr. Strachey observes, to "the pressure of our revenue system". Mr. Strachey's view as to the effect of our revenue system, in bringing the old proprietors into difficulty, will be seen on reference to the valuable memorandum which he has furnished, as will also the practical measures which he recommends. These well deserve consideration, but it is not in connection with the question now before me that they can be appropriately discussed. It will be more pertinent to remark that this able officer, while he admits the evils that are complained of, is of opinion "that we shall be running into something much worse if we attempt to remedy them by placing restrictions upon the transfer of land".

42. Another cause no doubt of the pecuniary embarrassment of landholders, and the consequent alienation of their ancestral property, is their ignorance and improvidence, and the knavery and rapacity of the professional money-lenders. Funds are wanted as an advance for the payment of revenue, or for the celebration of a marriage. The money-lender is resorted to, and the necessities of the borrower enable him to dictate his own terms. Enormous interest is stipulated for, and a mortagage on the landed property of the borrower is demanded. Time passes; interest accumulates; the borrower is forgetful of consequences; the lender, ever watchful, waits his opportunity, and when the debt, with interest on interest, has amounted to a sum about equal to the value of the hypothecated property, the machinery of the civil courts is called into action, and the ruin of the borrower is consummated.

43. A striking instance of this kind is given in the letter from Mr. C. Currie, the late Officiating Collector of Boolundshuhur, and there is not a district in which very brief enquiry would not discover dozens of similar cases. It is deplorable that knavery of this kind should be rampant, and that its success should be due in great measure to the action of our own institutions; but the remedy does not lie in placing restrictions on the transfer of landed property.

44. From what has been said it will be seen that I am more disposed to concur with those who oppose the imposition of any restrictions on the sale of land in satisfaction of debts than with those who would abolish the practice altogether. The just principle is that the whole of a man's property is liable for the liquidation of his *bonâ fide* debts, and it is important that the principle should be maintained. It is on this principle that the land is held to be hypothecated for the Government revenue assessed upon it; and whatever the intermediate processes now preferentially adopted for the realization of the revenue, it is the proprietary right in the land itself which is looked to as the real security, and its sale as the ultimate means of coercion. There is no just ground of distinction between the public and the private creditor;

and, unless the lien of Government upon the land for its revenue be relinquished, the sale of land, under whatever conditions, in satisfaction of private debts, must be permitted. The Government, it is obvious, cannot, with any prudence or safety, give up the security.

45. The point then which remains to be considered is, whether any, and what, intermediate processes may be unobjectionably followed in the execution of decrees for debt. And here I think it proper to invite attention to the able letters of Mr. F. B. Pearson, dated the 14th and 27th April 1859, in which he contends that the sale of land under judicial decrees should be in no wise restricted, and that the temporary transfer or sequestration of landed property are no less indefensible on principle than the prohibition of its sale.

46. On the other hand, it is argued that "attachment and temporary transfer or farm are found effectual for the recovery of arrears of revenue, and there is no reason why they should not, where the debtor's title is full and perfect, prove equally efficacious for the recovery of debts".*

47. Mr. Muir accordingly recommends—

1st.—That for all simple (unsecured) debts the process of the civil courts should be limited to the person and personal effects of the debtor.

2nd.—That for the execution of decrees on account of debt secured by hypothecation of land the property should be transferred for a term of years not exceeding fifteen, on payment by the transferree of such sum, at once or by instalments, as shall cover the debt, or that the decree-holder should be put in possession for such period as that the usufruct should make good to him his claim.

3rd.—That if the revenue officer should be unable to arrange for the adjustment of the debt in this manner, either the court should proceed to the sale of the hypothecated land, or that the case should be treated as one of insolvency.

48. The views of Mr. Reade, the late Senior Member of the Board of Revenue, and of some other officers who have been consulted, are in general accordance with those of Mr. Muir, and I regard them with great respect.

49. But I fail to see how Mr. Muir's proposed limitation of the process of the civil courts to the person and personal effects of the debtor in cases of simple debt is reconcileable with the opinion which he has expressed in the 14th paragraph of his second Minute, dated 20th April 1859, that no distinction can be "justly drawn from the *amount* of the debt". For my part I cannot see that the property of a debtor is less responsible for an unsecured debt than for a debt secured by hypothecation of land. Whether the debt be small or large, secured

*Minute by Mr. Muir, Junior Member, Sudder Board of Revenue, North-Western Provinces, dated 2nd February 1859.

or unsecured, the obligation incurred by the debtor is the same; the right acquired by the creditor is the same; and I can conceive no reasonable principle on which the application of different processes for a realization can be defended.

50. I would therefore reject the first of Mr. Muir's proposals, although I observe the Sudder Court concur in it.

51. In his second proposition, and indeed in his original principle, Mr. Muir, and those who agree with him, seem to have overlooked one point of essential difference between the public and the private creditor. The former has power under the law to bring the land to sale at once for the realization of its dues; but on administrative considerations, which need not be touched upon here, he *consents to forego* the privilege, and to accept the intermediate process of temporary transfer or farm, or even kham management, by which his demand, whether at once or by instalments, will be realized. To the latter, the private creditor, namely, it is not proposed to give the like option. To put the public and the private creditor on an equal footing, the *consent* of the latter should be obtained to the transaction. If the property should be transferred to another than himself on immediate payment of the amount of the decree, the private creditor could make no reasonable objection, but he might very reasonably, and it may be expected very frequently would demur both to accept payment by instalments, and himself to take possession of his debtor's property for a limited period, on the condition that within that period he should repay himself from the usufruct, and that on the expiration of the term of occupation his claim should become absolutely defunct.

> "Attachment and temporary transfer or farm are found effectual for the recovery of arrears of revenue, and there is no reason why they should not, where the debtor's title is full and perfect, prove equally efficacious for the recovery of debts."

52. Moreover, in regard to the first of these processes, it must be observed that a secured creditor seldom sues for the recovery of his debt until it amounts nearly, or even entirely, to the value of the property which is hypothecated for its repayment; and if his object be to obtain proprietary possession of the land, he will always play the waiting game. In such cases it is hardly to be expected that any person will pay the whole amount of the decree, either at once or in instalments, because, while paying the whole value of the property, he will acquire only a right of temporary occupation, and even if a consenting transferee should be found, his management will be made entirely subordinate to the recovery of his own disproportionate advance, every cultivator will be rack-rented, and the property will suffer injury, which it will require years of nursing to remove.

53. Then as to occupation being given to the decree-holder, it must not be forgotten that the same process of rack-renting will go on, as in the other case, and, unless it be absolutely stipulated that the creditor's claim dies with the expiration of the period for which the property may be made over to him, there will be no end to litigation as

to the profits which he has derived from his occupation, and the proportion which they bear to the amount of his original claim.

54. It is only proper to note that these several proposals were submitted by Mr. Muir before Act VIII. of 1859 was finally settled and became law.

55. In his second minute Mr. Muir has noticed the provisions of that Act (Sections 194, 243 and 244) which affect the practice of the courts in relation to sale of land in execution of decree, and has observed that "they do not go far enough, and are neutralized by conditions". This is not altogether correct. Section 194 imposes no other condition on the execution of a decree for the payment of money by instalment payments than that the court shall see *"sufficient reason"* for so ordering. The condition prescribed by Section 243 seems to be reasonable, namely, that "the judgment-debtor shall satisfy the court that there is *reasonable ground to believe* that the amount of the judgment can be raised by the mortgage of the land", &c., &c. In regard to Section 244, I must admit the validity of Mr. Muir's objection, and I would advocate the excision of the words quoted in the margin. As Mr. Muir says, "a judgment-debtor, with a compulsory sale of his ancestral property impending, is little likely to be in a position to produce substantial security for the amount of his debts, or for the full value of his property". While this condition remains, the section must be nugatory. If this be removed, the provision may become operative, and the degree of interference which it sanctions would be beneficial. I should have thought myself that the preliminary consent of the creditor might have been thought necessary, but as the Legislature have not required this in the cases provided for by Section 194, the satisfaction, namely, of a money decree by instalments, it may in fairness be equally dispensed with in the cases which fall under Section 244.

> "On security for the amount of the decree, or for the value of such land or share being given."

56. The mere removal of the condition above noticed, as neutralizing Section 244, would not, I believe, prejudice the interest of the creditor. They would be safe in the hands of the Collector. That officer would not make unreasonable objections to the sale, nor would he use this provision of the law as an instrument for the furtherance of his own views (supposing them to be opposed to such sales), nor would he, without due enquiry and ascertainment of annual profits derivable from the property in question, certify that "satisfaction of the decree may be made within a reasonable period by a temporary alienation" of the same.

57. But in the way of measures preventive of sale, it seems to me inexpedient (for the present at least) to go beyond the provisions of the law which have just been considered. They have not yet been in force for a twelve month, and it is desirable that their operation should be

watched, and their effect tested. It seems to me advisable only in addition to enact or to prescribe—

1st.—That in the execution of all decrees for money process shall be in the first instance directed against the movable property of the judgment-debtor,* and that only in the event of such being ineffective, shall process issue against ancestral property in land or the usufruct thereof.

* Houses, gardens and lands unassessed might follow the law of personalty. Property in land acquired by purchase need not, I think, be regarded in the same light with ancestral property, or be so tenderly dealt with.

2nd.—That before putting up a property to sale, the Collector should be required to make a careful valuation of it, and expose it to sale at the upset price of that valuation. If sale should not be effected, he should revise his valuation, and then sell absolutely.

3rd.—That authority be given to the Collector to investigate and decide summarily all claims to lien on the property about to be sold, and that he be required to make such investigation and decision before sale, so as to give to the purchaser a defined and tangible right.

58. It will be fair, too, as recommended by Mr. Reade, to require every decree-holder, for whose benefit land is to be sold, to deposit a sum not exceeding 10 per cent. on the amount of his decree, to compensate the Government for the expense which it incurs on his account in bringing the land to sale. As Mr. Reade points out, this is the only process of execution which costs the decree-holder nothing, while in the way of establishments employed and time occupied, it costs the Government a good deal, and there is no reason for this exemption. Such a demand cannot be reasonably denounced as an impediment thrown in the way of execution; it would be merely an equitable payment by the decree-holder for his sole benefit.

G. F. EDMONSTONE.

Memorandum on the sale of landed property in execution of the decrees of the Civil Court, by W. MUIR, *Esq., Junior Member, Sudder Board of Revenue, North-Western Provinces,—dated Allahabad, the 2nd February* 1859.

Letter of Government No. 1635, dated 20th October 1858.

BEFORE submitting my opinion on this subject, I may be permitted to refer to certain proposals which I had the honour to submit (in the absence of my colleague) as Officiating Member of the Agra Board, to

Government in 1856, with the view of restricting the present practice of facile and unlimited sale of land for money decrees.

2. Mr. W. Edwards in his revenue administration report of Budaon for the year 1855-56 commented at great length on the rapid transfer of property by such sales, and submitted several instances of the summary auction of estates on account of trifling debts. The remedies proposed by him, viz., more careful resort to distraint, and limiting the power of sale to the appellate courts, seemed to me inadequate. And as in my opinion "there could be no question that much injury was done by the indiscriminate and peremptory sale of landed property, whatever be its relative value to the sum decreed", I ventured to propose what appeared to me would be a more effectual remedy instead of executing a decree for money, by ordering the summary sale of the defendant's land. I suggested that the "court might be directed to call upon the Collector to realize the sum decreed by any minor process involving only temporary extinction of proprietary right; and if this proved impossible, then that the Collector should report the circumstances before proceeding to sale. Attachment and temporary transfer or farm", I remarked, "are found effectual for the recovery of arrears of revenue, and there is no reason why this should not, where the debtor's title is full and perfect, prove equally efficacious for the recovery of debts".

3. The original correspondence has been destroyed, but an extract from the Board's Proceedings containing the substance of the portions of the address in question, and the orders of the Lieutenant-Governor in reply, is attached to this note.*

* See Appendix A.

4. The suggestion, it will be observed, was referred by the late Lieutenant-Governor, Mr. Colvin, for the consideration of the Sudder Court, and on their reply it was dropped.

5. I need not say that my opinion of the injury done by these sales has received grave confirmation from the events of the intervening period. The passing of landed estates into the hands of mere speculators, without local influence or connexion with the soil, was always regarded as a serious disadvantage. It ousted from their ancestral lands those who by their natural position could best manage them, and be made instrumental in aiding the administration, and it substituted a set of men who were often unable even to maintain themselves in secure possession, and for all administrative purposes were far less responsible and less useful proprietors. In addition to this, we have now had universal proof that the moment the authority of Government is suspended, the old proprietors re-assert their foregone rights and oust the upstart intruders.

6. This has been equally the case, I believe, where the sale has been a direct transaction by consent of the former proprietors. It is not therefore an indubitable proof that such sales are regarded by the Natives as unjust. It is simply a fresh illustration of the tenacity with

which mankind all the world over cling to their ancestral acres, and when the check of authority is removed, a proof of the temptation that exists to resume the alienated birthright. The new owners brought in by our system were generally, as I have said, men without local power or influence; they could often hold their own position only with difficulty in times of peace; and when all restraint was gone, they were naturally the first objects of lawless outrage.

7. But whether regarded by the Natives to be right or to be wrong, the practical result of these sales has been equally disastrous. They contributed seriously to the embarrassment of Government and to the confusion and disorder of the days of anarchy. This proved an eminent source of weakness. This is a fresh argument against the present system, superadded to the evils that were already felt to call for the adoption of all possible means for checking the frequency of sales and permanent transfers.

8. I am of opinion that a material restraint upon these sales may be devised without injustice and in complete conformity with the habits and prepossessions of the people, and that debts may be to a great extent adjusted without resort to sale.

9. I would not place any restriction on the direct and voluntary alienation by proprietors of their land, or on the action of the courts in enforcing deeds of such alienation. But I would confine the action of the courts, so far as causing permanent alienation, strictly to cases of absolute sale by the proprietor's own act.

10. I entirely concur in the principle proposed in the letter of Government indicated at the beginning of this memorandum. For all simple debts I would limit the process of our courts to the person and personal effects of the debtor, and entirely exempt land from liability in the execution of the decree. Houses with gardens and other plots of ground attached to them in cities need not necessarily be classed with landed estates, but might follow the law of personalty.

11. For the execution of decrees on account of debts secured by the hypothecation of land, the following process might be adopted: At the stage when the Collector under the present system is directed to bring the property to sale, a precept might issue to the Collector, desiring him to provide for the liquidation of the decree by any disposition of the hypothecated property not extending beyond fifteen years. The Collector would thus be at liberty either to transfer the property for a term of years on payment by the transferree of such sum, either at once or by instalments, as would cover the debt, or to place the decree-holder in possession for such period as by the usufruct would fairly make good to him his claim.

12. Supposing the Collector unable to arrange for the adjustment of the debt in this manner, he would make a return to the precept accordingly.

13. At this stage two courses are open.

14. (1.) The law might either authorize the court to proceed to the sale of the hypothecated property thus irretrievably burdened. This, however, should not in any case be done until endeavour has been made to realize the claim from the personalty of the debtor. A summary enquiry should also precede the sale, as in the Punjab system, to clear away or define the title of other claimants in the property to be sold.

15. (2.) Or the case might be treated as one of insolvency, to be adjusted by the best practical disposal of the debtor's property, including among the assests the usufruct of the hypothecated land for fifteen years. Where there may be more than one debt secured by hypothecation of the same property, priority of the transaction might give priority of claim, or priority of registry might confer a preferential right.

16. I myself would prefer the second course.

17. I am averse to carry into effect through our courts the permanent alienation of land, excepting in cases where the terms of the alienation imply a direct, absolute, and perpetual transfer.

18. Where an owner creates a simple lien, or even a lien involving prospective conditional sale, I would limit the action of the courts to aiding the realization of the debt from the proceeds or usufruct of the property for a limited term. I believe that in all such cases nothing more was in the intention of the mortgager than that the income of the property should for a term of years be devoted to the liquidation of the debt. And I would not enforce more by our courts. I believe that this will be quite in accordance with Native habits and principles. The lender will feel that nothing short of a direct voluntary sale can secure for him more than the usufruct of the lands for a limited term, and he will have to look to his own interests in restricting his loans accordingly.

19. Where in addition to creating a recorded lien upon his land the owner has resigned his land into the possession of the mortgagee, the procedure would be analogous. There would be no foreclosure to be enforced, as at present, by our courts on the suit of the mortgagee. The only cause of action would then be on the part of the mortgager to secure on adjustment and restoration to possession. I would admit such suits on the same principles as those above indicated, and would limit the lien of the mortgagee after such suit to fifteen years from the date of the mortgagee's suing.

20. I have named fifteen years—as the period must of course be arbitrary—and that term is already familiar under the law of farm and transfer under Regulation IX. of 1825 and I. of 1841.

21. I would give very short notice before enforcing the provisions I have proposed. It may be said that injustice will be done, as money may have been lent on the implied, though not expressed, security of the land. But I do not think there is much in the argument. There may possibly occur a few cases of hardship. But there would be more evil

and hardship in allowing a long interval, during which creditors would be rushing into court to pounce upon the lands of these debtors before the new provisions should come into effect.

22. I earnestly hope that some such provisions as those I have ventured to urge will be introduced by the Legislature without delay.

23. It may possibly be objected in the first place that the design of the Government will be frustrated by the people themselves. Finding they are unable to raise money on simple bond, they will mortgage their lands more frequently than before. They may do so, but they will not therefore be in a worse position than before; they will be better off, because, instead of having their estates put up to the hammer for a simple debt, the lien will be followed by an only temporary alienation, the ancestral property again returning to the owner.

24. But, it will be added, even the hypothecation of property will fail to answer the owner's purpose of raising money. He will be driven to an absolute and irrevocable sale. Perhaps this may be the result. Perhaps we shall have more direct and voluntary sales than before. But it will be another form of doing that which was formerly brought about by an insidious and deceptive process. It is far better that a man should sell his property with his eyes open than be inveigled into parting with it by a process of false and delusive hopes that the transfer is only temporary. It is against human nature to suppose that the permanent transfer of land will be, in any comparable degree, so frequent where the alienation must be made immediate, absolute, and perpetual, as under the present insidious system. And if a man will barter away his ancestral lands knowingly and with the full consciousness of what he is doing, the law cannot help him further without locking up entirely the right and property in land by a perpetual entail.

25. It may further be objected that these proposals will reduce the value of land as a collateral security in raising money. They will no doubt do so to some extent. But they will still leave a wide enough margin for all purposes of agricultural improvement.

26. An indirect effect of this limitation may result in an essential benefit to the country, by placing a check on the unlimited power at present possessed by landholders of running into debt.

W. MUIR.

APPENDIX A.

Extract of Board's abstract of their address to Government dated 19*th September* 1856, *No.* 1284, *regarding revenue administration for the Rohilcund Division for* 1855-56.

PRESENT:
W. MUIR, Esq., Officiating Member.

THE real cause of the rapid transfer of property under the British Government, as compared with Native Governments, dilated upon by Mr Edwards, of Budaon, is, that we have created a marketable property in the soil, which did not before exist, and, having left unfettered the discretion of the zemindars in the disposal of their rights, that property, in the ordinary course of human affairs, must, like any other property, frequently change hands. Without interfering to unsettle the whole ground-work of a system which has been more than half a century in undisturbed action, and to arbitrarily limit the freedom of proprietors, and thereby depreciate the value of their property, it would be impossible to arrest the progress of transfer. But there can, in the opinion of the Board, be no question that much injury is done by the indiscriminate and peremptory sale of landed property, whatever be its relative value to the sum decreed. The remedy proposed by Mr. Edwards is that he would insist on a more careful resort to the process of distraint, and would limit the power of sale to the appellate court. The Board do not see that this would much improve the state of things.

The penalty of sale would not follow so promptly on the decree, but it would still be legally claimable by the decree-holder, for it is not apparently proposed by Mr. Edwards to invest the Judge or Sudder Ameen with any discretion to refuse sale. It has occurred to the Board that the evil might be palliated, if, instead of ordering sale of land paying revenue in satisfaction of their decrees, the courts were directed to call upon the Collector to realize the sum decreed by any minor process, involving only temporary extinction of proprietary right; and if this proved impossible, then to report the circumstances before proceeding to sale. Attachment and temporary transfer, or farm, are found effectual for the recovery of arrears of revenue, and there is no reason why they should not, *where the debtor's title is full and perfect,* prove equally efficacious for the recovery of debts. The Board have thought it sufficient to throw out this general suggestion for the remedy of an evil which (although they by no means share in the apprehensions entertained in some quarters as to its extent and dangerous consequences) undoubtedly occasions no small injury and distress; but they do not consider it necessary in an annual report to pursue the proposal into further detail, as it involves an alteration of the existing law (Section 2, Regulation VII. of 1795; Section 9, Regulation III. of 1803; Construction 752, dated 21st December 1832).

Extract of Board's abstract of the orders of Government dated 20th October 1856, No. 1979A, regarding revenue administration for the Rohilcund Division for 1855-56.

THE general tenor of the remarks by the Board has the concurrence of the Lieutenant-Governor in regard to the rapid transfer of landed property from the possession of the original proprietors, which is now the subject of almost universal attention and comment among district officers. The Government can do no more, generally, in this matter, however wide and unquestionable its importance, than watch the natural and unrestricted course of the transfer of property, and alleviate its effects from time to time by such measures as may be fairly within the power or influence of the executive administration. A copy of Board's remarks on the practice brought to notice by Mr. Edwards, the Collector of Budaon, of bringing the sale, under the orders of the civil court, of valuable estates, or interests in estates, for the liquidation of decrees of insignificant amount, will be sent to the Court of Sudder Dewanny Adawlut for their remarks, after calling for a full statement of facts from the Judge of Bareilly, who should obtain a complete list of cases for examination from Mr. Edwards, the attention given by whom to a subject which is certainly of grave consequence is highly commendable. Mr. Edwards ought, however, according to the prescribed rules, only to have noted it in his general report, and to have offered the special and detailed statement of his views in a separate address. It is necessary that this practice should be carefully insisted on as regards all general discussions.

Note by SENIOR MEMBER, *Sudder Board of Revenue, North-Western Provinces, on sales of lands in satisfaction of decrees of court.*

THE compulsory sale of landed property in satisfaction of decrees of court has been in the statute since 1793. It is only of late years that the operation of the law has been questioned—it is now the subject of varied reclamation.

2. Until the last revision of settlement, and in the Province of Benares, so much of the operation as involves an accurate definition and registry of rights in land was completed in these Provinces, the purchase of landed property as an investment of capital was hazardous. The purchaser was generally compelled to bring a suit to define his purchase and to obtain possession.

3. The rules of practice for the guidance of the courts formerly allowed, or at least did not prevent, the exercise of large discretion on the part of the Judge who ordered, and the Collector who conducted, the sale, and it is certain that in very many cases accommodation was arranged between creditors and debtors without resort to the last extreme measure.

4. Prior to 1806 great latitude was permitted to, or assumed by, the courts in providing for payment of the due to the judgment-creditor by instalments, and in granting indulgence of time. By Section 10, Regulation II. of 1806, this was restricted; the assent of the creditor, as a general rule, became necessary for such arrangements, but even then the discretion of a short postponement, under particular circumstances, if thought to be just and equitable, was vested in the Judge.

5. Regulation VII. of 1825, though not expressly repealing this provision of the law, by laying down more precise rules respecting attachment and sale in satisfaction of decrees of court, restrained the previously free exercise of the discretion.

6. The rules of the Sudder Court, in their circular order No. 205, dated the 10th June 1842, virtually forbad the excercise of such discretion, by defining the several classes of objections to sale of property, and the mode of dealing with them; but not including in the classification the objection of the debtors, which, whether as appeals *ad misericordiam* or otherwise, had formerly, under the law above quoted, been received by the courts.

7. Still the influence of the Collector naturally, and not unreasonably, exercised to prevent, if possible, the ruin of old and respectable families, could be, and was often brought to avert the calamity. The date of sale could be long deferred, postponements, though irregular, could be effected on one plea or another, and the most rapacious creditors could be induced to relax when the public sense was sure to be on the side of the reluctant auctioneer.

8. Act IV. of 1846 and the rules in the Sudder Court's Notification, 14th December 1846, which, under Section 11, have been the force of law, left no margin of grace or discretion, for sales were ordered to be held monthly. The Collectors could no longer postpone sales, and they were further compelled to give possession.

See a remarkable example in the summary cases, 24th June 1851, Pertaub Sing, petitioner, page 222 of report.

9. The result has been that the conduct of sales has almost universally been made over to the Deputy Collectors, the grasp of creditors has been tightened, and property in land of all property has been the most easily seized in execution, and most summarily and effectively transferred.

10. It is true that provision has been made, or rather has been attempted, to prevent the intrusion of strangers by securing a right of pre-emption to other members of the proprietary community to which the debtor belongs, but it has failed. The judgment-creditor may bid, and he is not required to bring money to deposit the requisite percentage of the amount of his bid; he has the privilege of tendering his decree in lieu of cash.* If other members of the proprietary community show an inclination to purchase, he of course bids to the full

* Circular order 30, 18th January 1839.

amount of his decree and costs, which often exceed the fair market value of the interest sold.

11. The consequence is, that the co-sharers of the debtor prefer the chance of a contest with the creditor, should he purchase, until he is glad to resign his acquisition, or to deal with a class of speculators who are to be found at every Collector's cutcherry, and who buy for a trifle and at a venture, without the smallest intention of taking possession, but with the assurance of some profitable bargain with some or other of the proprietary community.

12. Hence arise fictions of registry, fictions of delivery of possession, and other evils, or where the auction purchaser belongs to another class who buy a part with the object, by intrigue, dissension, and litigation, to grasp the whole estate, the mischiefs of a protracted contest, and patient waiting for revenge. Of this abundant evidence has been furnished in the events of the last year. It was to be expected the compulsory sale and perpetual alienation of land in satisfaction of debts is repugnant to Native ideas. The proprietor sold up has generally his cultivating occupancy, remains on the spot, and retains the assurance that he will recover his hereditary rights at some time or another.

13. The number of private transfers of landed interests in these Provinces, as exhibited by the Collector's registers of mutations, have largely increased of late years, so much so as to have been recently the subject of particular enquiry. There is good reason to believe that many are what are called benamee transactions, and that debtors finding their creditor preparing to sue in court constantly endeavour to escape the process in execution by the fiction of a paper transfer to some relative, friend, or agent beforehand.

14. The manifest objection to the present system is the preference which it gives to that which should be the last extreme measure above other modes of satisfying decrees.

15. The creditor avoids taking out a writ for the imprisonment of his debtor, since he must pay the cost of his keep in the civil jail.

16. He does not apply for distraint of goods and effects, for costs have to be advanced, there must be trouble taken to indicate the property, and the sale ameen must have his commission.

17. Attachment of landed properties is simply impracticable where in so many cases the proprietor of the land is himself the cultivator also, and, where practicable, gives but a slow and uncertain return, since the prior lien of the State's demand of land revenue must be satisfied, and the skill, experience, and influence with the tenantry of any curator can never equal those of the proprietor.

18. The judgment-creditor, therefore, preferably resorts to the process which costs him nothing, and in which every thing is done for him. The court sends his schedule to the Collector, who has to arrange the order of lots for sale, to issue the notifications, to see that they have been duly published, to employ a number of officers at his own cutchery,

or in the interior on the creditor's mission, and in a multitude of cases to find all this expenditure of time, labour, and expense (for the State defrays the cost of the establishment) superfluous, the money being paid; or if the uncongenial task of sale in form has to be done, the unavoidable acceptance of some speculator's bid, which he knows is only the prelude to some covert bargain, or the equally unavoidable acquiescence in a measure which forces the intrusion of a stranger on an angry community.

19. The system is fostered by the Native Judges. It adds to their dignity to have the privilege of sending their precepts to the Collector. The vakeels of their courts are often the nominal or real purchasers. They are saved the trouble of enforcing execution by other modes. The Collectors have large establishments, but they have important and various duties, and the principle of the law which makes this officer ministerial in giving effect to the court's orders relative to division of lands, sales in execution, and adjustment of mesne profits, has, in my opinion, been needlessly and mischievously extended to other processes which the civil courts ought to enforce by their own establishments.

20. The repeal of the law which authorizes the sale of landed property in satisfaction of decrees of court—a measure which some have advocated—is, however, inexpedient and unnecessary. We have in the districts, late of the Saugor Division, ample evidence that the prohibitory rule there has been even more mischievous than the encouragement to the preference of sale in execution to other measures in these Provinces.

21. The agricultural classes, generally improvident and blind to the consequences of debt, are at least in these Provinces under some restraint from the consciousness that the creditor has the power of enforcing his claims to their whole, or at least to a great extent. In the tract of country alluded to, recklessness and dishonesty have no bounds. There is no sense of liability—whatever may be the terms of a loan, they are accepted. The tenure of the land is safe so long as the Government lien is discharged. The creditor cannot oust, and sooner or later is glad to make a compromise. Thus capital is expended on personal gratification. Agricultural enterprize, if it does not recede, does not pass over traditionary bounds. There is no improvement, no progress.

22. All experience, too, is against attempts to bolster up a proprietary of land, which, whether single or a plurality, has become embarrassed beyond redemption, whether by extravagance, or folly, or dissension, or by the unit of the proprietor swelling, under the laws of inheritance, and in progress of time, to the hundreds who will seek no other avocation but land-ownership, till forced to relinquish it.

23. Sale of lands must be sometimes an unavoidable necessity, and of beneficial consequences in giving impulse to agricultural enterprize and improvement.

24. There seems to be no reasonable ground in this respect for making a distinction between the public and the private creditor. But

at present there is, in one sense, a very marked distinction in the North-Western Provinces.

25. The private creditor has every possible encouragement to enforce sale of land preferably to other processes.

26. The public creditor resorts to such sale as an extreme measure when all other modes have failed.

27. It is unnecessary to refer to legislative Acts and Rules of practice to prove this position. Sales of land for arrears of revenue are either the measure of last resort, when other expedients have failed, or as often, if not more so, the preliminary remedy for the over-assessed or disabled estate; the process extinguishes all previous liens, and enables the Government, after a fair test of capabilities, to restore the property purchased by itself to its former owners. In the one case hopeless insolvency and incapacity are set aside for a vigorous management; in the other the former proprietors are placed in a better position than before.

28. Sale, two, of rights and interests in land by the revenue authorities in satisfaction of other public claims, where the measure is authorized by law, is also, under existing rules, the last resort when other legal means of coercion have failed.

29. There is no reason why the same tenderness should not be shown by the civil courts in having resort to a last measure, nor where the necessity is admitted, that some restriction should not be imposed by the Government in the shape of a charge for the employment of its revenue establishments.

30. By the common law of England, I believe, except under the law of bankruptcy, it is not at the discretion of the decree-holder, but of the court, to select the mode of execution; and ordinarily arrest of the person, distraint of goods, and attachment, where practicable and safe, of profits of land, should precede the last measure of sale.

31. The extreme measure might further be obviated by a discretion being vested in the civil courts to make over the lands of the debtor to the creditor for a limited term, not exceeding twelve or fifteen years, on the analogy of the eligit of English law, the ousted proprietor being allowed to retain a reasonable portion of seer land, or a fixed sum from the collections for his subsistence. It is, however, desirable that such arrangements should be ordered by the Judge on reference to the Collector.

32. Where sale is considered unavoidable—and this point should also be determined by the Judge—the creditor should be required to pay into court a fine equal to 10 per cent. of the amount of his decree, inclusive of costs of suits, or of such reduced amount as he may declare himself content to receive in full discharge of his decree. The levy of this fine or fee should not of course be repeated in case of postponement of sale and a subsequent requisition in the same case. It is, as above stated, a reasonable charge on the part of the Government for the employment of its revenue establishments for the benefit of the private

creditor, and with other precautionary measures suggested against too facile an acquiescence in the measure, would undoubtedly operate greatly to reduce the number of sales.

33. It has been suggested that the sale of real property for debt should be limited to decrees in which property has been distinctly hypothecated. It is understood that this opinion has the countenance of experienced judicial officers; but after much enquiry on the subject it is my full conviction that this would not have much, or indeed any, appreciable effect in diminishing the number of sales. It appears to be almost an universal practice, in order to guard against the benamee transfers above alluded to, to insist on distinct hypothecations, and not only so, but to include therein property of much greater value, if fairly estimated, than the consideration paid. The blind unthinking subscription to documents put before them in such cases by the land-owners generally is the difficulty to be overcome. To be in debt excites no emotion; to be parsimonious is a standing reproach; and amongst the land owners of large possessions there are some, if not many, so infatuated as to believe that a certain degree of indebtedness adds to dignity.

34. The only practical remedy or palliative is, as above suggested, checks on the sale process, its limitation to cases of obvious necessity, and a larger discretion to the European officers who preside over the courts.

E. A. READE.

Supplementary Note by Senior Member, Sudder Board of Revenue, North-Western Provinces,—dated Allahabad, the 16th April 1859.

In a Note originally drawn up on progress No. 3567, and subsequently revised, with reference to the point raised, by one of the Judges of the Sudder Court as to the propriety and expediency of sales of land encumbered with mortgage in satisfaction of decrees of court for money, I have reviewed the past history and progressive tendency of laws and rules of practice to multiply cases of sale of land under orders of the civil courts, with its concomitant evils.

2. The prohibition altogether of sales of land in satisfaction of decrees of court in actions for money, which some have proposed, is, I consider, objectionable, and would, in fact, be inoperative unless it was extended to voluntary transfers.

3. Sale of land must in some cases be as necessary (and in its effects will be as beneficial for the progress of improvement) in satisfaction of the claims of the private as well as the public creditor.

4. But as has been shown in the case of the public creditor, not only is sale of land resorted to reluctantly, and as the last process, when all others have failed, but not unfrequently the Government itself becomes the purchaser, with the sole object of testing resources, re-adjusting

its demand on estates disabled by causes beyond the control of the proprietary, and reinstating them in possession on a better footing.

5. It is reasonable and necessary, having regard to the ordinary character and feelings of the land-owning classes in these Provinces, that the civil courts should show, as they formerly did, the same tenderness and reluctance in enforcing the sale process, instead of as at present; in fact, giving it a preference to other processes.

6. The injunction to sell land in satisfaction of decrees of courts should issue from the Judge of the district only.

7. The same authority should have power vested in him to substitute exclusion of the defaulter for a limited term, as is now done for arrears of revenue by transfers in putteedaree estates under Act I. of 1841, the possession and usufruct of the creditor being in satisfaction of his claim.

8. Creditors should no longer have the gratuitous assistance of the revenue establishments in enforcing their natural preference of the sale process, which costs them nothing, and in which everything is done for them. They should be required to pay to Government beforehand a percentage on the amount of their decree and costs, or on such reduced amount as they may agree to accept in full discharge.

9. Under these restrictions sales by order of courts would be brought within reasonable limits.

E. A. READE.

Supplementary Memorandum on the sale of landed property in execution of decrees of the civil court, by W. Muir, *Esq., Junior Member, Sudder Board of Revenue, North-Western Provinces,—dated Allahabad, the 20th April* 1859.

Letter of Government No. 1635, dated 20th October 1858.
Letter of Government No. 1, dated 6th April 1859.

The first of these letters, transmitted extract from a despatch of the late Honourable Court of Directors on the sale of lands in execution of civil decrees, with an expression of the Governor General's opinion in favour of restricting such sales to cases in which property had been distinctly hypothecated for the judgment debt.

2. The second letter now forwards a despatch from the Right Honourable the Secretary of State, dated the 25th January last, on the same subject.

3. On the first of these despatches I recorded a Minute so long ago as the 2nd February, which, however, by some mistake of the Board's Office, has not been laid before the Senior Member.

4. I now proceed to add a few remarks with reference to the second despatch since received, and the valuable and elaborate Minute of my colleague, which has just reached me.

5. I continue to hold the opinion expressed in my Minute of the 2nd February that the most simple, and the only effectual and consistent, course to put a stop to the evils so forcibly stated in the 4th paragraph of Lord Stanley's despatch would be to disallow sale altogether as a process in execution of money decrees. I believe a measure of this kind, however indefensible it may appear according to our European notions of political economy, would be in close accordance with the habits and customs of the country, and, as such, would be highly popular. The sole objection (as it appears to me) to the proposal, as stated in the 25th paragraph of my Minute, is not to be put in competition with advantages to be expected from it.

6. But this proposal was fully discussed in the Legislative Council on the 5th ultimo, both in Committee on the Civil Procedure Bill and in the Debate which followed upon the Honourable Mr. Rickett's motion, and has been decisively negatived. I need not, therefore, further dwell upon it.

7. Holding the above views, I am, as a necessary consequence, in favour of any restrictions that may be proposed on the practice of sale.

8. I would support the system, approved by the Governor General and recommended by the Sudder Court, of excluding the process of sale of real property from the execution of decrees for simple and unsecured debt. This remedy would, however, be only partial, for, as noticed in paragraph 23 of my former Note, it would inevitably lead to a large increase of mortgages.

9. In any case I thoroughly approve of my colleague's proposal for making sale a process to be resorted to only after all other means of realization have been tried in vain. This is in accordance with paragraph 11 of my first Minute; and is indeed the same proposition as that which I ventured to suggest to the Government in 1856.*

* See extract of Board's address, dated 19th September 1856, attached to the former Note.

10. The new Procedure Act makes some provisions towards this object, but they do not go far enough, and are neutralized by conditions.

11. Section 243 authorizes the court to postpone sale where the judgment-debtor can satisfy the court that he is able to raise the amount of his debt by a private arrangement of mortgage, lease, or partial sale of his property. This is so far good.

12. Section 244 is a still further improvement, as it gives the Collector power to stay any objectionable sale, and represent to the court that the debt may be realized by other means, and it gives the court power to authorize such course. But Mr. Currie's amendment in

proposing this section has, to a great extent, been neutralized by the provision that "security for the amount of the decree or for the value of such land or share" shall first be lodged by the judgment-debtor. A judgment-debtor, with a compulsory sale of his ancestral property impending, is little likely to be in a position to produce substantial security for the amount of his debts or the full value of his property. At any rate the Legislature might have left it optional with the court to demand such security when the judgment-creditor could show reasonable ground of risk. The contingency of a public sale for arrears of revenue urged by Mr. Harington is too remote to require an obligatory rule of this nature. In many districts such sales have been for years unknown.

13. I will now offer a few remarks in reference to my colleague's interesting Minute.

14. I quite agree that it is inexpedient to give the Native and subordinate courts the power of directing sale by precept to the Collector, and with reference to the suggestion in paragraph 7 of the Secretary of State's despatch, I think it advisable that all such precepts should be issued by the Judge. I do not however see that any distinction can justly be drawn from the amount of the debt. Transactions of a small amount are of as vital importance to the poorer classes as those of larger amount to the higher; and the former are entitled to the same consideration in the procedure established for their adjustment.

15. The speculations and chicanery of the people who hang about the Collector's auction hall have been well explained by Mr. Reade. Act IV. of 1846 may have stimulated and increased these by reducing the action of the revenue officers more than ever to a mere mechanical process. But the evils complained of were strongly felt long prior to that Act; they were productive of so much trickery and fraud in the Futtehpoor District, that a special enquiry was made on the subject by order of Government in 1844 or 1845. These evils will not be checked by the proposed arrangements. The inchoate or collateral "right and interests", however uncertain and obscure, will still be liable to sale at the demand of the judgment-creditor. "Any right or interest in land" may be sold under Section 249 of the new Act. The power of the Collector to interfere and arrange for the debt by mortgage, transfer, lease, attachment or otherwise, will be practically exercised only where there is a full and sole title, and where the debtor is in possession. In cases of undefined and collateral rights the sale process must, even under the proposed system, take its course.

16. In the late rules introduced in the Punjab, I understand that a distinction is drawn between ancestral and lately acquired property. In principle this is quite correct. We can have no object in giving a new security to titles gained by purchase under the present system, or to exempt from liability to sale a property that may itself have been acquired at auction. But it would be difficult to provide legislatively for

this distinction. In the rules of practice for giving effect to Section 244 of Act VIII. of 1859, it might be enjoined on Collectors to interfere as a rule simply in cases of ancestral property, and to take up other cases only under exceptional circumstances of hardship.

17. Before concluding, I would remark that I do not think the Saugor and Nerbudda territories a fair ground of argument, as it has been assumed by my colleague, against the abolition of the sale process. No proprietary rights exist in the soil there, or rather the Government has till lately refused to recognize such. The ensuing settlement is to be on a proprietary basis. But hitherto there has been no recognition of such a right. It is not to be wondered at that the country should not have advanced under a code which thus ignored the possibility of any secure title. We need not look to absence of the sale law as the cause of depreciation under such a system.

18. My colleague thinks that compulsory sales are sometimes "of beneficial consequences in giving enterprize to agricultural enterprize and improvement". I fear that such instances are rare and exceptional. The ordinary purchasers—bunnyas and money-lenders—are non-resident, and quite uninfluential. Under Mr. Thomason's exposition of the law the auction purchaser* has indeed the power of ousting the proprietor whose rights he has purchased; but we seldom find him with either the inclination or the means to enter on the agricultural occupation of his purchase; and even with these it is not often that he dare attempt to oust the old proprietors. The continuance of the ex-proprietor in the possession of his lands is, in fact, the rule instead of the exception, as is evident from the passages quoted in the margin.† The practical result of the sale, then, in nine cases out of ten, is to transfer the agricultural occupancy of the land from a person whose proprietary title in it gives him the highest incentive to labour for its improvement, to the same person without any proprietary title and interest in adding to the value or productive powers of his once ancestral acres; in short, from an interested proprietor to a mere tenant-at-will. Such a change is not likely to develop the resources of the country.

W. MUIR.

* Directions to Settlement Officers, paragraph 133.

† *Extract from Mr. Reade's Minute.*—"The compulsory sale and perpetual alienation of land in satisfaction of debts is repugnant to Native ideas; the proprietor sold up has generally his cultivating occupancy, remains in the spot, &c."

Extract paragraph 5 of Lord Stanley's despatch.—"The fact that the ousted proprietor almost invariably settles down as a tenant upon the estate which a little before was his own, and thus keeps alive the hostile feelings of the tenants against the person whom he regards as the invader of his property; and the consideration that nothing is so calculated to impair the loyalty and good will of the great and influential proprietary body of India as the direct and constant action of Government institutions in depriving them of their ancient possessions, all combine to make the case one of an exceptional character, and to press upon the Government the consideration of remedial measures, which, under a different state of things, might not have been called for."

notorious for being harsher landlords, and more addicted to rack-renting than the hereditary proprietors.

5. The talookdars or large proprietors as a body behaved towards us as they considered we had behaved to them, or, at any rate, as it happened they had anything to gain or lose. Being almost universally residents in their former villages, they retained their hereditary influence, and were frequently able to raise the country for plunder, insurrection, or murder, or, on the other hand, they preserved the peace on their estates, and either remained neutral, or assisted the Government by encouraging their followers to take service amongst our new levies.

6. During the height of the rebellion, and previous to the fall of Delhi, I was out in Allygurh, and much indebted to Rajah Teekum Sing, of Moorsam, for aid of various kinds; in fact, had he gone against us, we could scarcely have held our own. This well tried ally is always, but especially in those days, out spoken, and in reply to my questions as to causes for discontent on the part of the people, he repudiated all the usual popular cries, such as our desire to proselytize, &c., but constantly affirmed that we had no right either to sequestrate or sell landed property, except for arrears of Government revenue: and this sentiment, to the best of my belief, is almost universal.

7. There is doubtless considerable difficulty in affording strict justice to creditors, and at the same time preserving the social position of such improvident and reckless *persons* as are the majority of the Native landed gentry.

8. Some officer writing on this subject says—"The object is to prevent, if possible, the necessity of an encumbered estate commission by paternal interference on the part of Government". And another—"Would not allow the action for the recovery of debt to exist at all".

9. I do not see how this last theory is to be carried out, but every thing possible ought to be done to retain land in the possession of its ancestral owner.

10. The following principles might, in some degree, be the foundation for a reformed system.

11. In an agricultural brotherhood no individual should be allowed to alienate his share in the common property without the concurrence of the whole community.

12. In the case of a zemindar or talookdar he should be obliged to obtain that of his next two heirs.

13. Again I would, as is the case in these territories, take from the civil courts all power to sell rights in land or to investigate cases connected with land.

14. Such cases might, with much benefit to the country, be left to the district courts, with an appeal to the Commissioner, and he should be instructed to urge on the district officers [illegible] power by paternal [illegible]

by making over the estates to next heir, to prevent their alienation to strangers and speculators.

15. The Moonsiffs should be authorized to try all suits for personal property, but when a debtor is a landed proprietor, and the full amount of debt cannot be realized from the sale of personal property, he should refer the case for the consideration of the European Judge, who might attach the debtor's landed property through the revenue courts. By real property should be understood actual landed estates and its component parts, such as wells, gardens, &c., not mere houses or in gardens the possession of individuals unconnected with the proprietors of a village.

16. Lord Stanley's despatch treats upon the subject of curtailing the powers of Moonsiffs with regard to the enforcement of their decrees. I would retain their powers in this respect as at present, with the exception of decrees for landed property, as noticed above. If all executions of decrees were made through the Judge, it would necessitate an increase of European agency.

17. No country which does not possess a large respectable class, in fact an aristocracy, whether of wealth, talent, or old standing, can hope to withstand the constant endeavours of the ignorant, the foolish, and the desperate, to rise on the ashes of their superiors; again, we cannot at once drive a cart through the ancient predilections of a people—there is undoubtedly in India a deeply rooted reverence for their hereditary Chiefs and a supreme contempt for commercial interlopers.

18. It is for us to turn this principle to the advantage of our rule, and by so doing secure peace and happiness to the people.

From Major F. W. Pinkney, *Commissioner of the Jhansie Division, dated Jhansie, the 26th April* 1859.

* * * * * *

2. I do not see that the desired object would be gained by limiting, as proposed, the powers of the subordinate civil courts, for if the sale of landed property or rights in landed property was barred for those inferior courts, there would still be some higher court where such sale could be enforced, and to that court decree-holders would apply, and the end would be the same as it is now, namely, sale and ousting of old proprietors.

3. It appears to me that the gradual displacement of old proprietors by new men cannot be remedied. From the sub-division of shares, occasional bad seasons, great extravagance, and reckless borrowing at any rate of interest, to get over present pressing [illegible] out thought of future repayment, [illegible] prietary brotherhood [illegible]

has deprived the members of village communities of many sources of gain and livelihood formerly open to them, such as service in the armies of Native Chiefs, or as their personal military attendants, &c.; where our Government is established this is at an end, and the village lands are the sole support of all.

4. My experience in civil employ has been confined to the Saugor and Nerbudda Territories and to Bundlecund, which, however, are extensive tracts, and from what I have seen there, I do not think it generally possible, and certainly not desirable, to prevent the transfers of villages from impoverished landlords or communities to wealthy men, be they bankers or any other class. From sub-division of shares and debt the proprietors are unable to lay out money on the improvement of the village, each gets what he can out of his share of the land with the least possible outlay, the village gradually deteriorates, and, unless taken from the possession of a community of paupers, is ultimately ruined.

5. From the general want of faith amongst Natives with respect to money transactions, and from the want of credit and resources in ousted proprietors, I think few auction purchasers will be found willing to relinquish their purchases in favour of ejected proprietors.

From F. Williams, *Esq., Commissioner,* 1*st Division, dated the* 12*th May* 1859.

I have the honour to submit my opinion on the subject of sales of landed property in execution of decrees of civil courts.

2. I am afraid there is little hope of the district officers being able to induce auction purchasers of such property to relinquish their purchases in favour of the old proprietors, or to come to any terms with them, as is suggested in the despatch of the Right Honourable Secretary of State for India, and in that of the Honourable the Court of Directors.

3. The monied class to which auction purchasers belong have already shown that the fear of retribution is overcome by a stronger feeling, the determination to realize their money or their money's worth, and more if possible. The execution of decrees is being sued out as unhesitatingly as before the disturbances, and I do not think that in this division a case will be found in which compromise of any sort can be effected.

4. I fear that the restriction of the powers of Moonsiffs will only meet the cases of small proprietors. The transfer of large estates is generally the result of proceedings in higher courts, and under the present system the favourite mode of executing such decrees in all courts is by sale.

5. I venture to annex extracts from ... tion report, in which I ... check...

6. But I believe that to reach the root of the evil, which is the natural extravagance of the people, encouraged by the facility with which they can raise money on the security of landed property, more stringent measures must be taken.

7. I believe, if the opinions of landholders could be obtained, a vast majority in the North-Western Provinces would vote for the entire prohibition of the transfer or sale of landed property by decrees of courts.

8. I do not think the prohibition would have any other effect than the desirable one of preventing unnecessary and foolish extravagance. Money is hardly ever borrowed to pay the Government revenue or to improve estates; Native landholders do not expend capital on improvements. Money borrowed is, no doubt, in many cases paid in on account of arrears of revenue, but it is because the income has been devoted to the unreasonable expense of a marriage, or made away with to stop some pressing creditor.

9. If there are even estates which do not pay the revenue, they are exceptional cases, and in such cases the proper remedy should be applied.

10. The practice of transferring and selling has gradually grown up within the last half century.

11. There have been in every district in the North-West zemindars without the power of transfer, and safe from the civil courts, till within the last few years. I mean the cases in which there were no recorded proprietors, called khaneh khalee estates, of which Government was held to be the proprietor.

12. Among these there were exceptions caused by over-assessment, but generally the same families had been headmen and managers from generation to generation, paying the Government revenue punctually, and keeping the estates in good order. They were almost universally nearly free from debt and well off, or if they did owe money, it was only a small sum that could be adjusted out of one year's assets, and was advanced on this assurance and the security merely of the good faith of the debtor.

13. It must be borne in mind that on completion of the new settlement, which is commencing in many districts, the money-lenders will be still more eager to advance on the security of landed pr... When the rule of assessment is that Government is onl... the assets instead of two-thirds, this mode of ... higher attractions than ever, and ... old property may be l...

I h...

Extract from Circuit Notes by Commissioner, 1st Division.

THE narrative of events during the mutiny shows how instantaneously in every district the people proceeded to nullify, as far as they possibly could, all orders and decrees of the civil courts. The remarks on each district in this report show to what an extent with this view they destroyed the records.

The intense feeling of dissatisfaction with which the courts are regarded by the mass of the people has long been well known; the evil influence the proceedings of these courts have had on events during the late disturbances has become patent to all. But the amount of utter ruin which has been, and is being, inflicted on old families before the mutinies, gradually, but since the restoration of order, with crushing rapidity, has been brought to my notice so prominently, and with such earnest entreaties, that some steps might be taken, that Government might be moved to interfere, and to save the sufferers, that I think it right to mention some particulars, in order that, if possible, the remedy I suggest may be, if approved of, adopted.

The parties who have applied to me have taken the Government side and behaved loyally and well during the disturbances. In one case, as a reward for such conduct, Government has granted an advance of the sum required to satisfy the most pressing creditors. I cannot recommend for such liberal consideration the legion of cases in which hopes of similar aid have been and would be raised on slighter foundations; but I should be neglecting an important part of my duty—a much more important part than that of examining numerous and voluminous registers—if I did not draw attention to what is going on, and endeavour to prevent well-wishers and supporters of our rule from sinking into the vortex which has lately whirled thousands into rebellion.

I believe that a Special Commissioner, such as was appointed for the re-consideration of cases of sales for arrears of revenue in former days, would find ample ground for a similar exercise of the remedial power of Government where, owing to laws of our own creation, large estates have passed from old families into the hands of usurers and speculators for most inadequate prices, after the receipt by the creditors of sums covering the principal of the debt and compound interest, at rates double and treble the limit fixed by law, far exceeding the original sum borrowed.

But the general destruction of public records and private documents most probably precludes all chance of doing full justice to all parties in such cases, even if it could be thought politic now to attempt this. Though any general revision of past cases may be impossible and inexpedient, I believe further evil may be somewhat checked.

A brief description of one or two cases will suffice to elucidate what has been written above, and to introduce the remedy I would suggest.

In one case, after an adjustment of old accounts against the family, about Rs. 8,500 were allowed to be due; what portion of this was principal and what interest is not stated. The estates were mortgaged for this sum. Eventually decrees issued for about Rs. 12,000, and landed property stated by the owner to be worth Rs. 61,000,* yielding an annual profit of above Rs. 3,500, which would, at the average value of property, be worth at least Rs. 30,000, was sold for Rs. 12,056.

Dwelling houses valued by the owner at Rs. 19,000 were sold for Rs. 1,310, and a large old fort valued by the owner at Rs. 50,000, the real value of which it is impossible to estimate, but in which there are lakhs and lakhs of bricks, was sold for less than Rs. 1,000, that is to say, property certainly worth at least Rs. 50,000 has been sold for about Rs. 14,000 on account of a debt which originally was not much more than half the last sum.

In the other case it is not clear what the original debt was, but it would appear not to have been above Rs. 12,000, of which about Rs. 6,000 had been paid.

Estates and gardens valued by the owner at Rs. 48,000 have been sold for about Rs. 17,000, and house property has been sold for a little under Rs. 3,000.

I myself saw the family residence which had just been sold for about Rs. 1,300, and from which the victims of the civil courts were about to be ejected.* It consisted of many separate houses, the main one really a fine handsome house such as is seldom seen in the Upper Provinces, in small towns; and I have not the slightest hesitation in saying that the materials alone, the bricks and wood, must have cost as many thousand Rupees as the entire premises fetched hundreds.

It was allowed by competent Native Judges of such matters that Rs. 20 or 25,000 would have been realized for such premises in the principal town of the district.

In this last case property fairly worth at least Rs. 35,000 had been sold for about Rs. 20,000 on account of a debt which perhaps originally did not exceed half the last sum; and claims to the amount of Rs. 6 or 7,000 are still hanging over the unfortunate family.

It may be argued that the value of the property is what it will fetch in the market, but this is not the case; when there are few capitalists, they do not bid against each other, and it certainly is not the case now. The price of all property has deteriorated much since the disturbances at least in the part of the country referred to, and from these combined causes property sells for most inadequate prices. Hardly any but the creditors bid, and they of course as little as possible;

* I mention the owner's valuation only to show what he feels.

* I have since heard that the sale of these premises had been cancelled since my visit.

and before long the owners of valuable estates will have become houseless paupers if the present mode of executing decrees is continued.

Now in such cases it appears to me that, instead of sacrificing the property of the debtors, and turning them out of house and home, the whole of the claims might have been liquidated out of the annual income of the estates under the management of an officer appointed by the court in a very reasonable time; that there is no legal objection to such a course, for Judges are allowed to sanction provision for the adjustment of decrees by instalments; and that there would be no difficulty in persuading the decree-holder to consent to an arrangement which would ensure the satisfaction of their claims within a definite period, if decree-holders and civil courts could be divested of the idea that there is only one process for the execution of decrees—sale.

This is not mere theory; there would hardly have been a more hopeless case than the Rajah of Kasheepoor, in Rohilcund. His debts, aggregating about a lakh of Rupees, were compromised for Rs. 50,000 which were advanced to him by the Nawab of Rampoor, the creditors readily accepting half their demand. The Rajah's estates, then yielding less than Rs. 20,000 gross annual income, were put under the charge of the Collectors of the districts in which they were situated, and in about seven years the advance was repaid, and the property, then yielding nearly Rs. 30,000, was re-leased to the Rajah, who had been taught economy by living in the meantime on an allowance of Rs. 700 a month assigned to him out of the income of the estate thus saved to him.

Of course all embarrassed estates could not be taken charge of by Collectors, and in ordinary cases such advances would not be forthcoming. But in the cases I have brought forward, by attaching the estates and appointing an ameen to manage them, and pay the assets into court for distribution to the creditors, the claims would have been paid off in five or six years in full probably, which is about the time perhaps that would be occupied by the courts in fully disposing of the decrees that is utterly ruining the debtors, who would, under the system I suggest, receive back their property entire and unencumbered, wiser and better men, from having been obliged to economize, and having been saved from the demoralizing chicanery of a civil court, and certainly better subjects, and more likely to maintain good feeling towards Government among their old tenants and friends, who sympathize with them and us when they retain influence.

A circular order from the Sudder Court, impressing on all officers charged with the execution of decrees in the civil courts, where such landed property is affected, that where by the attachment of the property and application of the annual income to the liquidation of the demands there is a reasonable prospect of satisfying all claims in a moderate period, it is not necessary or desirable to authorize the extreme measure of sale, the mere indication perhaps that there is another mode of proceeding, if such an order could be issued, would do much to check a great evil.

From G. F. Harvey, *Esquire, Commissioner, Agra Division, dated the 17th May* 1859.

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3. I am very certain that the subject is one which calls for remedial legislative action, and that it will be possible to provide a remedy, which, without disturbing any existing and acknowledged rights, shall operate beneficially in the future.

4. As a preliminary, I would restrict the powers of the lower courts (Moonsiffs) to the trial of simple contract debts, and generally suits for money, or other purely personal property.

5. The whole matter, however, turns upon the execution of decrees, and the liability of ancestral landed estate to sale in satisfaction of an award on a bunnya's balance of account, a simple contract debt, or any other mere money liability. I entertain the opinion that in strictness of local law and equity and traditional usage among Hindoos, and even in ancestral Mahomedan estates, all that can be made liable in satisfaction of such debts amounts to the *usufruct, i. e.*, the gains or profits derivable by each hereditary holder in possession, or each co-parcener in a joint undivided brotherhood, during their lives, from the produce of the land, which is virtually accounted to be strictly, morally, and securely entailed, so far as any power in the actual occupant exists to transfer it, even for the benefit of a lineal prospective successor; and the decree only of a civil court has been allowed arbitrarily to invest a debtor with new powers, unadmitted by himself, over property, for the purpose of ruining him and impoverishing his heirs and descendants.

6. I am unable at this moment to give the careful reflection and consideration to the question which it deserves; but I apprehend that it should not be difficult to legislate for the appointment of *receivers*, or trustees of *usufruct*, for the benefit of creditors, and in liquidation of decreed debts; nor do I doubt that the share of profits thus held in satisfaction of decrees may be collected and brought to account in the same mode as any other demand upon the same land—the amount of income due to the *debtor*, after expenses of cultivation and discharge of Government revenue, and also after an agreed allowance for his maintenance, if not incarcerated, are all simple details which may be easily provided for in each case, especially if those most interested in preventing the admission of a stranger and preserving the rights of cognate progeny are, whenever practicable, nominated to exercise the office of receivers, their trust to cease with the life of the debtor, or the satisfaction of the debt decreed.

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From J. H. Batten, *Esquire, Officiating Commissioner of Rohilcund, dated Bareilly, the 26th May* 1859.

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2. The whole subject is fraught with such great difficulties that I must confess to a consciousness of inability to *discuss* it with any benefit to those authorities on whom will fall the duty of *deciding* it.

3. I cannot help thinking that the evil, in a political point of view, of the transfer of landed property by the operation of our civil courts from its hereditary owners to the commercial or money-lending community has been somewhat exaggerated. Gentlemen of a *doctrinaire* turn of mind, who have been searching for causes to account for the want of sympathy with our Government shown by the heads of the agricultural classes, have been glad to hit upon this blot; but it may be fairly doubted whether, if all the old families had been left in possession of their estates, we should have found the majority actively enlisted on our side. It was certainly not the operation of our civil courts which enlisted the nobility and gentry of Oudh on the opposite side.

4. Be that as it may, I am ready to concur in the general statement recorded by Lord Stanley in the 2nd paragraph of his despatch, while with his Lordship I would at the same time deprecate any attempt to impeach rights and invalidate titles founded by our own laws, merely on the ground of their unpopularity or inexpediency.

5. In regard to the *past*, I am far, too, from thinking it a hopeless task for the Collectors of districts to act on the suggestion contained in the 4th paragraph of the despatch, and to attempt amicable arrangements, by which timid auction-purchasers may get rid of their uncomfortable property, and by which its re-transfer to the old hands may be effected.

6. The real difficulty lies in the *future*. It cannot be concealed that the suggested remedies all involve class legislation, which is theoretically objectionable. They also involve a confession that the popular voice is stronger than the law, which is a real evil; and *thirdly*, they involve the anomaly of declaring that what is the highest wisdom in Ireland (a country in many respects resembling India in regard to attachment to soil, hereditary prejudices, &c.) is the highest folly in India. My respected lecturer, Professor Longfield, the Judge of the Encumbered Estates Court in Ireland, would, I fancy, hardly forgive me if I were to lay down the proposition that the greatest benefits have accrued in that country from getting rid of an impoverished and embarrassed squirearchy, and by substituting in their place capitalists in the shape of Dublin lawyers and Belfast merchants; but that in British India the great and healing measure is to proclaim the Hindoo Mitakshara; to create entails in the families of broken-down debtors, whose merits consist solely in their "blue blood"; and to expel from the soil all wealthy parvenus infected with the stain of trade.

7. Nevertheless, having allowed, according to the Secretary of State's 2nd paragraph, that in India the unpopularity of this latter class, and their inability to protect themselves or help Government, is an evil, I suppose my political economy must bend before the force of local natural circumstances, and I must give a vote in favour of *some* remedy.

8. While the law remains as it is, no advantage can be gained by cancelling the power of the Native Judges to sell land in execution of

their decrees for debt, and by transferring such cases to the file of the English Judge. I very much doubt whether with the increase of that file the Judge (or his Sheristadar) would pass as good or as careful orders as the Moonsiff.

9. As far as I can judge, too, the increase in the number of auction sales has been owing, not to the power given to the Native Judges to sell land, but the improved practice of the civil courts in the matter of the trial of suits. The system of periodical statements; the necessity enforced on all the Judges of accounting for even one day's abnormal delay; the *vultus instantis tyranni* of the "Sudder"; all these are sufficient to account for the number of sales, which of course bear their proportion to the number of suits instituted and decided.

10. Without a change in the law, which makes the real property of a debtor ultimately liable for the payment of his debts, all that would be gained by the restriction of the powers of the Native Judges would be *delay*, and hitherto *that* has been considered an *opprobrium* of the civil courts, and not a praise.

11. Being, however, called upon for my vote in this matter, I must vote for that delay in processes of execution against real property (*i. e.*, against land)—proposing that some law be passed restricting the sale of hereditarily held land in satisfaction of decrees for simple debt to the court of the European Judge; prohibiting the sale of such land on such decrees in cases below Rs. 300; and in cases above that amount, compelling the Judge to refer the matter for an attempt at adjustment by the debtor, his family, and his co-parceners to the Collector* of the district; and also compelling the civil court to accept duly executed bonds of instalment, secured (when money securities are not forthcoming) by the rent or produce of the land remaining after the satisfaction of the claim of Government for revenue.

* Section 244, Chapter IV., Act VIII. of 1859 (or new code), gives an opening to the Collector in this matter, which opening can be widened in any new enactment.

12. In conclusion, I may record my firm conviction that the new law for the limitation of suits will have a highly beneficial effect on the whole *status* of the lending and borrowing community; and my decided preference for reforms of that kind, of the kind effected by the new Code of Civil Procedure, the new law for the recovery of land rent, and the like, to any changes that can be effected by class-protecting legislation.

From F. B. GUBBINS, *Esq., Commissioner, 5th Division, dated Benares, 1st June* 1859.

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2. * * The question mooted is so very difficult a one that it required a mature consideration of the subject before I could venture upon offering an opinion.

3. The gradual dispossession of a brave and high caste agricultural race that has held the land for a period varying from five to thirty centuries, and its re-placement by the cowardly mercantile bunnya race, has always struck me as one of the worst features of the British rule in India.

4. The transfers that thus take place are, "as every one knows, occasioned by one of three causes—the *first* of which is sale for arrears of land revenue; the *second*, sales under decree of court; and the *third*, private transfer".

5. To begin with "sales for arrears of land revenue". The only remedy that I can propose for the evil is that sales that take place under this head should not affect the property sold for a longer period than twenty years. I am of opinion that with a fair assessment the power to alienate all proprietary right in the soil for a period amounting to nearly an entire generation will prove amply sufficient to secure the rights of the State.

2nd—"Sales effected under decree of court."

Several different minor headings group themselves under this general one:

I. Sales under decrees, which decrees in themselves do not effect the property in the soil.

In these cases I would recommend that only the rights and interests of the person against whom the decree is given be alienated, and that the rights of the judgment-debtor's heirs be in no way affected by the sale. That on the death of the judgment-debtor his heirs enter into possession of the soil free from all liabilities on account of the debt on account of which the decree in question was given.

II. *Mortgages.*—I should allow the act of the mortgager to affect only his life-interest in the soil, and any decrees given under this head should only alienate the rights of the person who executed the mortgage deed. Should the mortgage deed have been executed by the present incumbent and by his sons, I would allow the grandsons to step in and claim their right of succession, and I would make any alienation extending beyond two generations null and void. I would make all instruments that had not been registered within three months of their execution totally invalid.

III. *Decrees founded on deeds of gift or sale.*—I would adhere to the general principles laid down by me under the head of "Mortgages". Every unregistered instrument should be rejected by courts of law. The present incumbent should only be allowed to alienate his own life-interests, and in cases where the incumbent's direct heirs had joined in executing the instruments, I should allow the third generation to claim their right of succession, no alienation being valid beyond two generations.

3rd.—"Private voluntary transfers."

I would under this heading be guided by the general principles laid down under "mortgages" and "decrees founded on deeds of gift or sale". I should require all instruments to be registered, and I should prevent alienation beyond two generations, allowing only the life-interests of the persons executing the deeds to be alienated.

6. I would, in explanation of the views that I have recorded in the foregoing remarks, venture to record the following observations. The causes that lead to the ruin of the agriculturists in this country, be he a large or small proprietor, are—(1) reckless extravagance; and (2) forgery and the chicanery of our law courts.

7. Under the head of extravagance I would enter as the chief and first item the waste that occurs on the recurrence of each marriage festival. But there is besides this a gradual extension of that pernicious system which is poisoning the roots of all classes of society in Europe, viz., the desire to live beyond one's income. This feeling is stated by persons whom I have consulted on the subject to be one of very late growth, and would seem to be consequent on the republican ideas that have been introduced under British rule.

8. Looking upon the agriculturist of India as little better than a savage, I would put him into partial leading strings, and I would prevent his entirely alienating his own landed property, which he will most undoubtedly insist on doing, unless prevented by law.

9. To effect this I have only laid down some crude general principles, but were they to form the basis of any enactment, modifications would doubtless in some instances have to be made, so as to permit, under peculiar circumstances, of perpetual alienation being effected.

10. To prevent, as much as possible, the second bane (*i. e*, forgery) under which the agriculturist suffers, I would make it imperative that every instrument in any way affecting the proprietary right in the soil be registered within three months of its execution, and that it be in default of such registry regarded as so much waste paper.

11. As regards the limitation of the powers of the lower civil courts, alluded to in the concluding portion of Mr. Bayley's letter now under reply, and in the 7th paragraph of the Home despatch, I beg to submit that these powers do not appear to me to affect the merits of the case. What is wanted is that the old proprietary body should not be dispossessed, and this the Moonsiffs' decree does not do. It is the *sale in execution* of decree that requires to be checked, for the judgment-debtor's landed property being all registered in our revenue records, it is more easily seized than any other description of property.

12. The Moonsiffs' decrees seldom admit a stranger within the circle of the village co-parcenary body. Their jurisdiction is so limited that very few cases involving proprietary right in the soil come before them, and those are mostly suits pending between the various members of the village community.

From A. O. HUME, *Esq., Collector of Etawah, dated Etawah, the* 11*th April* 1859.

* * Compromises of the nature alluded to are by no means uncommon amongst the Natives themselves. It is not at all unusual for auction purchasers to re-sell at a slight advance to the original proprietors lands that they had bought, *intending* to keep, while very often auction purchasers have *no* sort of intention of holding the land, but only buy to re-sell immediately, if possible, to the old proprietors who will pay highest; or if these have not the where-with-all, to some of their family or neighbours. Unfortunately the destruction of our records prevents our ascertaining without great difficulty the exact percentage, but I believe that at least 12 per cent. of landed properties sold by auction find their way back to the original proprietors within three years entirely by private compromises.

2. Independent of these, which arise spontaneously amongst parties themselves, Government officers can bring about many more. I have often done so, not of late, for these matters require much spare time, and now-a-days reports and nukshas are too numerous to leave *any* spare time; but in former days, when I first came to Etawah, and as a joint in Mynpoorie and elsewhere. And now I think that in, say, 90 per cent. of cases in which the transfer was not more than from seven to ten years old, in which the lands were still held by the original transferree, and in which the old proprietors had the means to make a fair offer, I could at once effect a compromise. But the difficulty is that the old proprietors themselves *rarely, very* rarely, have the means, and of course you cannot ask an auction purchaser to relinquish his purchase for nothing. The sons, it is true, go into the Army, or get into civil employ, and make much money, but generally before this comes about the purchasers have built houses, dug wells, planted groves, and been gathered to their fathers; and then in most cases nothing would induce their descendants to part with what has so become their hereditary lands.

3. I don't think, therefore, that very much more can be done in this way than is now done. Every good district officer, necessarily as it is, labours as extensively as his other duties will admit to prevent, in the first instance, cases going to the civil courts, and to mitigate in the next place the misery, injustice and crime to which these latter give rise, when cases have gone to them. To appoint special officers to effect these compromises would be useless, as it is local influence and knowledge that is required, while the local officer already does *as* much as he can screw out time for, and can do no more. As for those officers (if there be any such) who do not give attention to these matters, and do not of themselves do as much in this line as their other avocations will admit of, I should fancy their influence must be small, and that it would, therefore, be useless to impose the task upon them as a duty. The up-shot of all is that compromises, as it is, are often made by the parties themselves, without

the intervention of any Government officer; that influential Government officers can and do effect a certain number more; and that I fear no very important results would be attained by the issue of formal orders directing all district officers to endeavour to bring about such restitutions of landed property.

4. As regards the limitation of the powers of the lower civil courts, I myself see no use in it. It is the system not the grade of court to which objection is to be had. If it is right (which of course I utterly deny) that all hereditary landed property should be indiscriminately sold in execution of decrees of court, no matter of what kind, then it would be clearly unjust to throw obstacles in the way of exercising this right, by reducing needlessly the number of tribunals that can authorize it. If it is wrong, then neither Judges nor Moonsiffs' courts should have the power of enforcing it. Here and there a Moonsiff may be corrupt (such, however, is not believed by the Native public to be common), but as a whole I don't think that the Moonsiffs' courts are a bit worse than the Judges', and I can see no possible reason for debarring the one and authorizing the other to enforce sale.

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From C. CURRIE, *Esq., Offg. Collector, Boolundshuhur, dated* 6*th April* 1859.

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2. Before proceeding to express my opinion on the various points raised in the despatches, I shall endeavour to describe the evils for which it is now proposed to devise a remedy. I consider this the more necessary as, although the existence of an evil calling for an immediate remedy is acknowledged, yet it appears to me that neither its extent nor its cause are fully appreciated.

3. The primary cause of the evil is described in paragraph 2 of the despatch from the Right Honourable the Secretary of State for India No. 4, dated 25th January 1859, as pride of ancestral rights, disdaining to succumb to proverty induced by the operation of a law of equal succession, and consequent debt. This infers a straightforward transaction between creditor and debtor, leading to natural results, described by the transfer of proprietary rights from encumbered landlords to wealthy capitalists.

4. Had the evil complained of been brought about, as suggested, by the operation of a law which could not be gainsayed in principle and fairly carried into practice, the remedy would not be beset by so many difficulties as now encumber it. But I shall endeavour to show that by far the greater portion of the evil has been caused by chicanery and fraud practised in Government courts in the execution of laws enacted, and under rules of procedure sanctioned by Government, and for which

consequently Government must, in a great measure, be held responsible.

5. In the first place I think too great a stress is laid on the effects of the law of equal succession, although it does undoubtedly lead to extensive sub-division of landed estates, yet in the case of proprietary brotherhoods this does not necessarily lead to impoverishment. A feeling of clanship pervades the whole community to such an extent that poverty properly so called is unknown. Numbers take service and leave the cultivation of their ancestral holdings to their relatives, perfectly confident that no attempt will be made to deprive them of their rights in their absence. The savings of service become a source of wealth to the community.

6. I do not deny that debts are contracted, but I think that their real extent is by no means so great as is supposed. Their apparent magnitude, as tested by the decrees issued in the civil courts, is to be ascribed to the facilities granted by these courts to the attainment of fraudulent decrees. The facilities to which I allude are, *1st*, the issue of decrees on mahajun's books, uncorroborated by other evidence; *2nd*, the issue of decrees for sums claimed as due by verbal evidence *alone*, without the attestation of books or other corroborative evidence; *3rd*, the unlimited amount of interest allowed to be charged.

7. On the first point it is scarcely necessary to remark how entirely the debtor is at the mercy of the creditor. Unable to read or write, the borrowing land-owner is obliged to trust to the good faith of the mahajun. Monetary transactions extending over a number of years, the unlucky debtor suddenly finds himself sued for a sum far beyond his competence to pay. Unable to retain in his memory the several items of a lengthened transaction, he has no means of refuting the entries exhibited in the mahajun's books. Even if these books are correctly kept, the mahajun has great scope for fraud; but where the regularity of the books is not insisted upon, his power is unlimited.

8. I will instance a case which has lately come under my notice. Ameechund, a wealthy trader of Khoorja, issued a decree for Rs. 9,826-7-9 against the heirs of Ruttun Sing, and a precept was sent by the civil court for the sale of the rights and interests of the defendants. Finding that the defendants were Rajpoots, and being opposed to these sales, I endeavoured to effect a compromise, and induced the parties to abide by the decision of certain arbitrators, of whom I was one. The whole papers, along with Ameechund's books, were laid before the arbitrators, when the following facts were elicited: Ruttun Sing began to have transactions with Ameechund in S. 1904. In S. 1905 a balance was struck, and it was found that Ruttun Sing owed Rs. 936-1-6, and in S. 1909 a balance of Rs. 4,930 was shown in the books. On examining the items, however, it appeared that during the six years that these transactions lasted Ameechund advanced Rs. 5,705-9-3, and was paid Rs. 2,431-6-6, consequently the balance of Rs. 4,930 was made up of actual balance Rs. 3,274-2-9, and interest Rs. 1,755-13-3. This was in

1852. In 1854 Ameechund sued for Rs. 4,930 original debt and Rs. 269-8-0 interest.

		Rs.	As.	P.
Total	...	5,199	8	0
He obtained a decree with costs	...	899	12	3
And costs of appeal ...	...	263	15	8
Total	...	6,363	3	11
In 1858 he issues the said decree, with interest to date	...	3,463	4	0
Grand total	...	9,826	7	11

9. It will thus be seen that of the whole sum sued less than one-third had been actually advanced in coin, even allowing that his books were correct; but in his daily register book, roznamah bohee, I found two entries following one another, indicating sums advanced to the defendants on the 1st and the 10th of the month. Indeed, I need scarcely remark that, besides the books, Ameechund had no voucher to produce in attestation of his claim, and the original debtor being dead, his sons were utterly unable to verify the correctness of the entries shown in the book.

10. Cases of equal hardship have come under my notice in which decrees have issued for sums claimed on the verbal testimony of witnesses—a source of proof, the validity of which any one at all acquainted with Native testimony can appreciate.

11. Again it often happens in proprietary brotherhoods that debts incurred on behalf of the whole community are contracted in the name of one of the headmen. As long as he lives his influence is sufficient to enforce the fulfilment of the conditions of the loan. But when he dies the creditor, finding his terms unheeded, sues the heirs of the nominal debtor, and sells up their real property. The plea that the debt was incurred on behalf of the whole community is ignored, as joint responsibility is only recognized in the revenue courts. I have known instances in which the unfortunate headman, even during his life-time, had decrees issued against him for the debts of the community.

12. If to the above we add the number of *ex-parte* decrees issued in the absence of the defendants, in the majority of which no intimation of the suit having been instituted has reached the defendants, some approximate conception of the amount of injustice done by the civil courts may be attained.

13. I have dwelt thus fully on these points, with a view to combat the idea promulgated in paragraph 3 of the despatch No. 4, that the difficulties are such as scarcely to admit of any alleviation in regard to past transactions. I have endeavoured to point out how great have been the shortcomings of Government, through their authorized courts, in

order to insist on the absolute necessity of Government granting alleviation, whatever the difficulty, whatever the expense.

14. Fully acknowledging the necessity of affecting a compromise, I can hold out no hope that there will be any willingness on the part of auction purchasers to relinquish their purchases in favour of the ejected proprietors on receiving a fair compensation. If any option be allowed, no compromise will be effected, as it is a weakness of human nature to revel in the enjoyment of unlawful in preference to lawful gains. The relinquishment of estates thus gained must be rendered compulsory by law, and the circumstances under which the law will be enforced should be defined.

15. The conditions should have reference to the present *status* of the ex-proprietor. It is not an invariable rule that the ousted proprietor settles down as a tenant. In cases in which they have deserted their ancient homes, I think interference would be uncalled for. But where the ex-proprietors are still found as tenants upon the estate, and claim to be reinstated, I would reinstate them on their paying into court a sum equivalent to the amount paid by the purchaser. The profits of the estate would amply indemnify the auction purchaser for non-payment of interest. I would not limit the right of the original proprietor or his heirs, but would allow claims from any of the brotherhood, provided they or their ancestors were former co-sharers of the estate. Regulation I. of 1821 might be taken as a precedent, and the execution of the law entrusted to a special commission. By this process the validity of the title would not be impeached, as the justice of the civil decree would not be impugned.

16. As regards the future, I do not think that the limitation of the authority of the subordinate civil courts will be found a sufficient remedy. I am an advocate for the entire abrogation of the system, partly because it is a process unknown prior to our rule, and partly because it appears to me to be unnecessary.

17. On this latter point I would remark that my experience leads me to believe that but few *bonâ fide* transactions are made the subject of litigation in the civil courts as long as the dealings between the creditor and debtor are straightforward. There is no difficulty experienced in procuring an amicable arrangement, by which the debtor either mortgages his property for a term of years, or comes to some other agreement with the creditor, without the intervention of the civil court. The withdrawal of the power to bring to sale landed interests for debt would tend to force on results similar to these, and would also in a great measure diminish debt by making capitalists less willing to lend. If, however, it should not be deemed advisable to forego the system altogether, I would recommend, in addition to the limitation of the powers of the sudordinate civil courts, the introduction of a law of entail, authorizing the owner of real property to entail such property either in favour of one or more of his sons, or direct descendants. Although this power may be given by the Hindoo law, yet it is not acted upon,

and the law has been allowed to become a dead letter. The enactment of a new law on the subject might be the means of gradually introducing the law of primogeniture—an object greatly to be desired.

18. In this case it would be necessary to define the extent to which the real property of the creditor could be made available for the recovery of his debts. Any rule enabling the creditor to obtain possession during the life-time only of the debtor would, under the present state of Native morality, be an incentive to suicide. It would therefore be preferable to authorize the transfer of the property for a term of years, irrespective of the life of the debtor, leaving it optional to his heirs, in the event of his demise, before the expiration of the term, to regain possession on payment of the balance due.

From F. O. Mayne, *Esq., Collector of Banda, dated Banda, the 25th April* 1859.

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2. The difficulties under which I infer the landed proprietors of India are said to labour are—1*st*, the operation of the law of equal succession, which leads to the extensive sub-division of landed estates, or to the joint tenancy of a large number of sharers, and is followed by the impoverishment of numerous families, which once were considered wealthy; and 2*nd*, debt and the natural results thereof under our present law and policy, viz., sale of the debtor's landed property, of whole estate, or, what is far worse, the admission of strangers by the sale of a portion of the estate.

3. On the first difficulty, although in the correspondence under notice I perceive no sentiments indicative of a disposition to interfere with the law of equal succession, yet, inasmuch as the advantage of introducing a law of entail in India as a remedy against the evils of joint succession has been generally discussed of late, it will not be out of place to record my dissent to any such proposal. For such a law would, if compulsory, undoubtedly be received with the strongest disfavour by the Native communities, and unless it were compulsory, none would, in my opinion, be found to avail themselves of its provisions. It is a law entirely foreign to their ideas of justice, and they would regard it as a serious infringement of their rights and usages. When the land tax is easy and due care in its assessment has been paid to the means and number of the community who are dependent on the produce of the land for bread, I think you will seldom find any evils arising from the law of equal succession. The just remedy against the evils inveighed, viz., is therefore, in my opinion, a light assessment. Whenever the estates are owned by large co-parcenary communities, with fair rates and unimpeded resources the land is likely to prosper with none so well as the old proprietary community.

4. On the second difficulty, the unrestricted transfer of land by sale, my opinion is very decided. The sale of land, either for balances

of revenue, or in satisfaction of decrees of court, has always been unpopular with our Native subjects, and the results most unsatisfactory.

5. I do not so much judge from the events of the past two years, nor do I place much stress on the fact of the auction purchasers in the course of the late disturbances having invariably been ousted by the ex-hereditary zemindars. Private purchasers of land were dispossessed in exactly the same manner, whatever may have been their former behaviour towards their tenantry. And it is a patent fact that rebellion was not confined to ousted zemindars. Some of our most staunch opponents and persevering rebels were men who had retained their ancestral property under our rule. We should, I think, be careful of drawing too hasty conclusion from facts which have accrued during the late rebellion. The Natives in many cases acted more from impulse than from any preconceived notions of any wrong which they wished to redress. The whole nation, as the Natives themselves say, went mad, and did many things in their madness, for which in their sober senses they can give no reason of justification. The auction purchasers were ousted because they happened to exist; but, in truth, the landholders still in possession of their paternal acres, and landholders deprived of their hereditary estates, whether by private sale or by auction sale, as well as many auction purchasers, all rebelled alike, and I am not aware of any of the old hereditary families having actively co-operated with the Government authorities in the suppression of disturbances, except when we had might and strength on our side. In the Banda and Allahabad Districts at least I can answer for the fact that most of the old hereditary families to whom the tenantry were attached merely used their influence and strength against us.

6. Talookdars, or single proprietors in possession of their hereditary estates, possessing all the feudal power and influence of large communities, have occasionally remained on our side, and done excellent service by active co-operation, but not always so. The landed communities, or large brotherhoods on the other hand, have no power or influence beyond the limits of their own estates; and unless we are in power and able to influence them by a long line of British bayonets, it is less than a question which side they take. They almost invariably ally themselves to plunder and disorder. In the case of a general rebellion, like that we have just experienced, therefore, I think it matters very little whether the lands are held by the hereditary lords of the soil or by interlopers. Indeed, I would warn the Government against going into the opposite extreme and placing the land entirely in the hands of the hereditary stock. We have generally found the auction purchasers stand by us, and although helpless as a physical force, they have been most useful in affording information and other assistance. It is I think just as well to retain the second element to a certain extent.

7. Still, as I said above, the ready transfer of land from the hands of the hereditary proprietors to those of new men is unpopular,

and attended with much social evil. For simple purposes of police and the detection and suppression of crime in peaceable times, the difficulties occasioned by the ejection of the original owners of the soil are very great. The hereditary landlords of India are supreme on their own estates. Nothing can occur without their knowledge; they know the character of every man in the village; and no one can reside in the village without their concurrence. Their word is law, and they are all-powerful for the suppression of local disorder and the detection of crime. Directly the estate is sold, the police responsibilities are transferred to the new owner, who is at perpetual war with his new tenantry. He cannot gain a footing in the village without armed attendants, or the aid of the Magistrate, and he consequently has not the slightest moral control over the people, and knows little or nothing of what is going on, and is generally next to useless to the Magistrate as an aid in the suppression of crime.

8. For these reasons I am a strong advocate for restriction upon the future transfer of landed property, but at same time maintain that the exchange of landed property, which has hitherto taken place, is not altogether without its advantages. What we have to guard against now is the strong tendency shown of late years to root out the old landed proprietors altogether. If we can now stop that, I think the medium already gained is an advantage.

9. The auction purchasers will never willingly relinquish their purchased rights in favour of the ejected proprietors, and any attempt at coercion of the men who have as a body found it to their interests to stand by us, in favour of those who have almost invariably behaved badly, would be as unfair as it would be impolitic. Auction purchasers on the re-establishment of our rule, as a matter of course, fell back into their old places, and they value landed property far too highly ever to be induced to relinquish it. Besides it would be regarded as a weakness on our part, and something that they had gained by the rebellion, if the ex-hereditary proprietors in consequence of their rebellion regained the rights of which they have been legally deprived. We must let the past stand, and can without injustice draw no distinctions now between our hereditary proprietors and auction purchasers.

10. The transfer of property has, however, gone quite far enough, and I would in future put a stop to *all* sales of land by decree of court, and would never allow sales of land for balances, unless gross contumacy or collusion to defraud the Government were most clearly proved.

11. Sale of land might also be allowed to remain legal when confiscated for rebellion, or for wilful and gross neglect of police duties. Such would very seldom occur.

12. Private sale, gift, or mortgage must also be allowed; but they should only be allowed with the consent of the Local Government upon a full report of the facts in each case.

13. In satisfaction of decrees of court, and in all ordinary cases for balances of revenue, a farm or transfer of the land for a limited

period, say twelve years only, should be allowed, and even then I would allow the zemindars' malikhanah, and hold them still strictly responsible for good order and the detection and suppression of crime.

14. For revenue purposes, so as to avoid sales or transfers of any kind for balances as much as possible, I would revert to the original dates of payment, viz., 15th April, 15th May, 15th November, and 15th December, as they are still in Bundlecund, instead of those now in use in other provinces, and thus give the tehseeldars a certain degree of control over the crops before they are removed from the ground. This is a process which the people themselves perfectly understand and do not object to. I doubt though if even that would be necessary wherever the assessment is really fair and light, and the state of the agricultural population flourishing.

From J. W. Sherer, *Esq., Collector of Cawnpore, dated Cawnpore, the* 13*th May* 1859.

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2. The great source of the evil complained of seems to lie in the direct engagement of Government with proprietors of small estates. Possessing little or no capital, and being destitute of that prudence which warns him to take advantage of favourable harvests as a provision against bad years, the cultivating proprietor is driven by a season of scarcity into the hands of the money-lender. High instalments and sharp practice complete his ruin; and a suit in the civil court transfers his land to the capitalist.

3. I cannot see that any remedy would be provided for this state of things by limiting the powers of the civil courts. The ruin which is brought upon the small proprietor by a civil suit would probably be only accelerated by depriving him of the resource of borrowing, and exposing him, on the first occurrence of default, to the direct action of the revenue courts. Nor can I suggest any expedient which would meet the exigency of the case. It seems to me that the question reduces itself simply to one between debtor and creditor; and it is difficult to devise an arrangement between debtor and creditor which shall not defeat itself by injuring credit.

4. As regards any compromises between deprived hereditary proprietors and auction purchasers who have been violently dispossessed in the late disturbances, I am unable to see how such could be effected, unless Government undertook to compensate the latter, which I presume Government is not prepared to do.

5. I do not think what has happened can be remedied, but I do not know that the decline of the small landholders may not be arrested in each district as its settlement lapses.

From J. Strachey, *Esq., Officiating Collector, dated Moradabad, the* 19*th May* 1859.

I have the honour to forward a paper on the subject of forced transfers of landed property in these Provinces.

I have thought it best to keep separate the question of the practicability of bringing about compromises between the old hereditary proprietors and the present holders, and have therefore not entered into that subject.

In this district a semblance of regular government having been kept up throughout the late disturbances, the dispossession of the new by the old proprietors took place to a less extent than happened in many other parts of the country.

Whatever may be the case elsewhere, I have seen here no sign of any inclination on the part of auction purchasers to relinquish their property in favour of the former owners. Nor have I been able to hear of any important cases in which the ejected proprietors retain any means of buying out the present holders, however anxious they may be to do so. The ruin of the former possessor was almost always complete before the estate was sold.

I think this a dangerous question to open at present. It will be time to consider the redress of former wrongs of this kind when we have done something to guard against their recurrence in future, and to stop their present progress.

If any real opportunity present itself for bringing about an equitable and amicable arrangement, by which the old proprietor of an estate can be restored to its possession, it ought no doubt to be taken advantage of. But under existing circumstances I think that district officers should only interfere in such matters with the utmost caution, or people will begin to doubt the value of the titles to land which we have ourselves granted.

There are so many loose notions prevalent regarding proprietary rights in land that I doubt the expediency at present of the Government issuing any instructions of the nature suggested in paragraph 4 of the Secretary of State's despatch.

On forced transfers of landed property in the North-Western Provinces.

The excessive number of transfers of landed property from the hands of the hereditary proprietors to those of strangers has long attracted notice; but the events of the last two years have placed the subject in a new light, and have shown very forcibly the political dangers which are entailed by the dispossession of the old families. So much has been said of late about this that I do not wish to enter more particularly on this part of the subject. These evils, of which every body is complaining, are real, and I am far from underrating their importance; but there is a strong tendency, it appears to me, to seek

for remedies in a wrong direction. Nothing but the most urgent political considerations could justify measures imposing checks and prohibitions on the transfer of land, and I disbelieve, for my part, that any such political necessity now exists.

2. The causes which have led to the dispossession of so many of the old proprietors of the land have been most variously stated, and, in my opinion, seldom correctly. Until these causes are clearly understood, there is little hope that the right remedies will be applied. The Secretary of State, in his despatch of the 25th January 1859, speaks of the operation of the Hindoo law of succession, which has led to the extensive sub-division of landed property, as one of the main causes of these transfers. I doubt whether this has had much to do with the matter. I see no reason for supposing that the land is generally more sub-divided now than it has been for centuries. I believe that the tendency is rather towards the consolidation of small landed properties, and that the chief causes of these transfers are to be looked in another direction.

3. It has been often declared that the main principle of the existing revenue system in these Provinces is that it alters nothing, and only maintains and defines the rights and obligations which it finds established. This belief is, I think, a very erroneous one. The system established by us has been little less novel to the people than the settlement of Bengal was to that country in the last century.

I do not say that our system is not a good one, but merely that it is not what it professes to be.

Before our Government was established there was practically no such thing in the possession of individuals as proprietary right in land according to our ideas of what property is.

This is probably true in every primitive state of society, and it was especially the case in India. Such rights of property as did not appertain to the Sovereign belonged, as a general rule, rather to a community than to an individual.

It is clear that this state of things must pass away with progress in civilization, and it is no reproach to our system that it has recognized this fact. But the principal has been carried out too rapidly and too rigidly to its logical conclusions.

Property bears with it heavy obligations, and in no country are they heavier than in India. Knowledge is not learned in one generation, and the ancient proprietors of the land were ordinarily quite unable to support the burden that was thrown upon them. Theoretically, our revenue demand is not excessive in its amount, and if the proprietors had been generally men of capital and intelligence, they would have experienced the great advantages of clearly defined rights, of long leases, and an uniform demand. But they were generally very poor and very ignorant, and the system has pressed heavily upon them. That the load has become a crushing and hopeless burden is the fault, not of

that system, but of the rapacity and dishonesty of the money-lenders, and the incompetency of our civil courts. But of these matters I shall have to speak further on.

The landholders had been accustomed from time immemorial to pay every year a portion of the produce of the land to the Sovereign. This was the sole idea that they had of the Government demand, whether it was paid in money or in kind, and it was altogether a new notion to them that the assessment should be fixed on another principle. I believe that nine out of ten of the proprietors of land have been, and are to this day, quite incapable of understanding the advantages which the new system really holds out to them. If there be a good harvest they think it strange and unintelligible that the Government takes so little. If the harvest be a bad one, they think it the extremest tyranny that the Government takes so much.

Their forefathers having lived for centuries from hand to mouth, the idea of providing from the abundance of one year against the deficiencies of another is something which they seem quite incapable of understanding. Least of all could they appreciate the fact that the recognition of their proprietary rights made the tenure of their lands a very different thing from what it was before, and that its compulsory alienation was a necessary result of their inability to meet their new obligations.

This I believe to have been in the great majority of cases the origin of the difficulties of the old proprietors. The next step was to fall into the hands of money-lenders, and thence to the civil courts, and final ruin—the progress was easy and certain.

If the Government demand were much lighter than it is, I believe the same thing would go on, though less rapidly. It is not that the demand is in itself too high, but that the system under which it is levied has imposed on the proprietors obligations and responsibilities which they cannot understand, and which they cannot meet.

4. Putting aside all questions of merely political expediency, there is much to regret in the extinction of the ancient families who have held possession of the soil for centuries; and although a great deal that we hear upon this subject is founded on a spurious sentimentality, and deserves little consideration, the attachment which the people bear to their ancestral lands cannot be wisely disregarded. If our system of administration be not in accordance with the feelings of the people, it cannot be successful. Yet although the fate of many of the old proprietors has been quite undeserved, and must be regretted, it must not be forgotten, on the other hand, that the process that has been going on has not been a purely mischievous one. There can be little doubt that the new proprietors are generally men of greater wealth and intelligence than their predecessors. The greatest possible of evils in any country is that the proprietors of land should be unable to undertake any works for its improvement, and the curse of landlords impotent for good is doubly heavy in a country which is almost entirely an agricultural one.

While, therefore, I admit the evils that are complained of, I think we shall be running into something much worse if we attempt to remedy them by placing restrictions upon the transfer of land; and while I believe that these evils had their origin in the system which we have ourselves established, I nevertheless think the tendency of that system to be in the main good.

To think of now enforcing the obsolete doctrines of the Mitakshara, of establishing systems of entail, and interfering with the proprietary rights and obligations of individuals, would be to begin upon an altogether retrograde course of legislation.

5. This brings me to the consideration of the practical measures that ought now to be adopted.

I think that much of the difficulty which is found in dealing with such questions as this arises from the notions with which English people are imbued on the subject of the interference of Government with matters which in our own country are properly left to private individuals. Hardly a thought has been given to the improvement of the condition of the agricultural community by other than legislative or administrative measures. This is not a question to be argued here, but it is my conviction that there are hardly any duties which in countries more advanced in knowledge and civilization fall on the landlord and capitalist which may not in this country be undertaken with propriety by the Government.

There is one measure bearing directly on the subject now under discussion which would, I think, be of the greatest utility.

I have stated my opinion that the origin of the debts which lead to these frequent transfers of property is, in the great majority of cases, the pressure of our revenue system. Although the main principles of that system are sound, it has, I think, been administered in a very harsh and unbending manner. Collectors and their subordinates have far too much become mere machines for grinding revenue out of the people. But no amelioration or relaxation of our revenue administration will give any real relief so long as the landholders find it impossible to obtain advances of money on fair and reasonable terms.

No one who has not had the matter brought practically and directly to his notice can have the least conception of the knavery and rapacity of the money-lenders to whom the landholders of these Provinces are obliged to have recourse. Whatever ought to be the case in theory, it is very certain that questions of abundance or scarcity of money, of greater or less demand for loans, of good or bad security, of competition, and the like, have in practice comparatively little to do with the settlement of the terms on which agriculturists in this country ordinarily obtain advances of money. The conditions depend far more upon the degree of simplicity in the borrower, and of rapacity in the lender, than on anything else.

Our civil courts have unhappily been the ready instruments for these dishonest operations, and our system of judicial procedure, instead of checking, has stimulated and exaggerated them.

No reform of our courts will alone meet this great evil; and I believe it to be of the highest importance that the Government should not continue to shut its eyes to the ruin in which this widespread system of fraud, or of something little better, is involving the proprietors of the land. They are incapable of protecting themselves, and the Government must interfere in their behalf, or bear, in the opinion of the people, all the discredit of their ruin. There is nothing in the simple alienation of landed property which is in itself distasteful to the people of this country. I believe that in the great majority of cases in which the old proprietors during the late disturbances resumed possession of their estates, they were enabled to do so, not because the people considered that they held an indefeasible right to the soil, but because the transfer of the land to a stranger was only the final step in a long course of dishonest proceedings by which the former proprietor had been undeservedly brought to ruin.

The establishment of banks in every district, under the control of the Government, for the purpose of making loans to the agricultural community, secured by mortgage of the land, would be a measure, the importance of which it is impossible to exaggerate. There would be no real difficulty in this if the Government would take up the matter. There would be no lack of capital, for under proper management the security of investment would be complete.

The people are incapable of doing anything of this sort for themselves, and nothing will be done until the Government admit that it is one of their duties to take the initiative in such matters. We have an example, if I understand its constitution rightly, in the French *crédit foncier*, of the kind of institution which I would establish here. Having at present no access to books, and nothing but my recollections to trust to, I cannot say to what extent the details of the French system could be adopted in this country. But I believe the principles on which the *crédit foncier* is founded, however foreign they may be to English ideas, are quite applicable to our case. Until some measures of this sort are adopted, I think that legislative interference is necessary as a check upon the proceedings of the money-lenders. I would provide that no decree be given for interest exceeding in amount the principal of the debt. However objectionable this may be in theory, it has become practically necessary.

6. The remarks on the procedure of the subordinate civil courts, contained in the 6th paragraph of the Secretary of State's despatch, are no doubt true; but I can only partially admit the expediency of the remedies that are suggested.

It is of the utmost importance to maintain the principle that the whole property of a debtor is liable to be applied for the satisfaction of his *bonâ fide* obligations. I see no reason in a provision that sales of

real property shall not be allowed in cases below a certain fixed amount, nor do I think that the proposal to make the sanction of the Judge necessary to sales is a good one if it goes no further than this. It must be clearly laid down under what circumstances the Judge can refuse his sanction. Nothing can well be worse than to leave such questions to be decided, as I understand they are in the Punjab, according to the opinion or caprice of individual Judges. Whatever be the liabilities to which landed property is subject, they ought to be distinctly defined by the law.

There can be no doubt that land has constantly been sold in the most unnecessary and unjust manner in satisfaction of the decrees of the civil courts. A remedy for this is urgently required; but it is not to be found in merely artificial checks on the transfer of land. If our system be rendered a just one, we shall need nothing more.

7. The subordinate civil courts ought, I think, to have no power to try any suits except those for money and personal property, and in cases of execution of decrees they ought to have no power to order the attachment or sale of any but movable property.

All cases involving the right to land or other immovable property, and all applications for its attachment or sale in execution of decrees, should go to the Judge; no application of this sort should be received until every effort had been made to realize the amount from the movable property of the debtor. The most important cases that come into the courts are these applications for the sale of land in satisfaction of judgment debts.

With respect to them, the new Code of Civil Procedure (Act VIII. of 1859) contains some excellent provisions, the effect of which will be great if they are carefully worked. I refer especially to Clauses 194, 243 and 244 which authorize the courts to order the amount of a decree to be paid by instalments, and to postpone the sale of land under certain conditions.

I think, however, that the two last-mentioned clauses might be greatly improved.

The civil courts have no means at their disposal for ascertaining, in a satisfactory manner, the real capabilities of an estate, and I think that whenever an application is made for the sale of land in satisfaction of a decree, the case should be referred to the Collector. It would be his duty to make a complete enquiry into the value and capabilities of the land, and if it appeared to him that the amount of the judgment could be recovered within a reasonable time, either by the temporary alienation of the land, or in any other manner, he would report the proposed arrangement to the Judge, who would confirm it if the security for payment seemed to him sufficient.

8. There is another point regarding the sale of land by order of the civil courts which is of much importance. It is notorious that land is now frequently sold by the Collectors at a price enormously below

its fair value. There is so little real competition in most cases that collusion between intending purchasers is of not unfrequent occurrence, nor have people generally any sufficient means of ascertaining the real value of estates.

There is a provision in the French Code intended for the protection of the rights of minors, the principle of which might be usefully adopted in this country. When a final order is given for the sale of immovable property, a valuation should be made of it by the Collector in the most careful possible manner. If at the sale the offers for the property did not amount to a sum equal to the valuation, the sale should be suspended for one month. During that time the Collector would enquire into the reasons which had prevented the sale; he would endeavour to obtain fresh offers for the property; and, if necessary, he would revise the valuation.

When the property was next put up for sale it should be sold absolutely to the highest bidder.

9. The improvement in the procedure of the civil courts has of late years been rapid, and we may reasonably hope that it will continue. It is a safe assertion that no reform can take place in the law which will not bring with it an amelioration of the condition of the agricultural community. Much remains to be done in clearing away the remains of the old ceremonial and technical rubbish of our system of legal procedure. Every encouragement has been, and is still to a great extent, held out to dishonest litigation, and of classes of the community the principal victims of this system have been the proprietors of land.

Some day, I hope, we may see, among other reforms, the establishment of courts of conciliation, whose special function it will be to preserve the people from any litigation at all, except that which is really unavoidable.

JOHN STRACHEY.

From H. W. DASHWOOD, *Esq., Register, Sudder Court, dated Agra, the 16th May* 1859.

PRESENT:

R. B. MORGAN, Esq., *Judge.*
R. MONEY, Esq., *Officiating Judge.*
M. GUBBINS, Esq., *Officiating Judge.*

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2. The Court direct me to say that their opinion on this most important question has been so recently expressed in connection with the Bills for simplifying the procedure of the civil courts, and for the establishment of Courts of Small Causes, that in answering your present requisition they will content themselves with a simple reference to their

former letters in respect to points which have been already discussed, and enter into detail on those points only which have not before been mooted.

3. In paragraph 2 of his despatch dated the 25th January last the Secretary of State for India narrates the different steps which under our system lead to the compulsory transfer, through the agency of the civil courts, of real ancestral property, and the evil consequences which result from it. In so far as Lord Stanley may be held to reiterate the argument advanced by the Honourable Court of Directors in paragraphs 4 and 5 of their despatch, dated August 4, 1858, as quoted in the margin, the Court dissent from his views, that point having been disposed of already in paragraph 5 of their letter dated the 24th December 1858; but the Court entirely concur in the Secretary of State's remarks as to what has been the practical result of our system. The mutiny has made that sufficiently manifest, though the Court are not led to believe that the tenantry have shown during the disturbances that attachment to their hereditary landlords which is asserted in the despatch.

> It has been held by our highest courts of justice that under the Hindoo law, as it prevails wherever the Mitakshara is respected, the alienation by a father of immovable ancestral property without the consent of the sons, except on proof of necessity, is illegal; and it is not easy to understand how property which cannot be legally sold by the individual himself may be legally sold by a court of justice in satisfaction of his personal debts.

4. The Secretary of State, after admitting that the difficulties arising out of the unrestricted transfer of real property scarcely admit of any alleviation in regard to past transactions, proceeds to say that the partiality manifested recently for their old landlords by the tenantry of estates sold at auction may have given rise to a willingness on the part of auction purchasers to relinquish their purchases in favour of the ejected proprietors on receiving a fair compensation. He thinks, therefore, that officers in the revenue branch of administration might take advantage of such opportunities as might offer for restoring in this way the old proprietors to their estates.

5. The Court must say that they look upon this as a very dangerous experiment. Parties willing to come to an arrangement would need no assistance from the officers of Government, and the suggested interference of the authorities would be ultimately productive of increased discontent, by reviving again, only to prove futile, hopes which had long been abandoned. In nine cases out of ten poverty caused by extravagance has, in the first instance, led to the sale of the village. The former proprietary, who more generally occupied the lands themselves, have lapsed into tenants, and as such are not likely to become richer; and once lost, there is little hope of their recovering means sufficient for regaining the property. Under these circumstances no benefit would, in the Court's opinion, result from encouraging fruitless expectations.

6. In regard to the future, Lord Stanley is of opinion that the circumstances are such as to call for the adoption of some palliative measures; and after noticing the various changes which have taken place in the constitution of the Moonsiffs' courts, raises the question of altering their existing constitution, and of reverting to the system under which they were tribunals for the adjudication of suits only for money or other personal property, at the same time enlarging their jurisdiction. His Lordship further proposes to prohibit the attachment and sale of real property in cases below a fixed amount, and to declare a Moonsiff incompetent in suits exceeding that amount to issue such a process without the previous sanction of the Judge.

7. The Court remark that since their letter of the 24th December was written, a considerable alteration in the law has been made, and another important alteration proposed. The Court refer to Section 244 of Act VIII. of 1859 which makes provision for the temporary alienation of land on the representation by the Collector that sale is objectionable; and to Section 10 of the revised Bill for the establishment of Small Cause Courts which restricts execution by such courts to personal property, but authorizes any *civil court of general jurisdiction*, in which they presume is included a Moonsiff's court, to proceed against a debtor's immovable property on presentation of a certificate that anything remains due after execution against movable property.

8. The first alteration the Court consider a most judicious one. In respect of the second they do not at present see what advantage is likely to be gained by transferring the power of selling land from the Small Cause Judge to a Moonsiff. If land is to be sold at all in execution of Small Cause Court decrees, it seems the simpler process for the Judge of that Court to move the Collector than for the Moonsiff to put in force the decree. But the Court have not as yet had an opportunity of perusing the debates on the revised Bill, and therefore they defer passing any definite opinion on the subject just now.

9. With reference to the proposition of the Secretary of State of reverting to the old system under which the Moonsiffs' courts were tribunals for the adjudication of suits only for money or other personal property, the Court admit that it is a question well worthy of the attentive consideration of the Legislative Council, in connection with the constitution of the courts, which subject must soon come under discussion. One great advantage of such a measure would be that all real actions would be heard by more experienced and better paid Judges than Moonsiffs. At the same time, however, the Court observe that this question is distinct from that of the expediency of the indiscriminate sale of land in execution of decrees.

10. The Secretary of State further suggests that a check might be imposed by providing that no process, either for attachment and sale of real property, shall be allowed in cases below a fixed amount. The Court do not think that benefit would arise from limiting the sale of land in execution of decrees to cases above a fixed amount; but they are inclined

to adopt and considerably to extend the third proposition made by Lord Stanley, and to recommend that in no case whatever should a Moonsiff have the power of ordering the attachment and sale of land paying revenue to Government, without the previous sanction of the Judge; that officer in deciding upon references of this nature made by the Moonsiffs subordinate to him would of course be open to receive any representation which the Collector of the district, under the authority vested in him by Section 244, Act VIII. of 1859, might think proper to submit for the purpose of staying the sale of the land sought to be sold; at the same time it would be necessary to define the discretionary power of the Judge, and to lay down distinct rules as to the class of cases in which sale was to be had recourse to.

11. The Court believe that by some such measure as this a considerable check would be placed upon the indiscriminate sale of land in satisfaction of decrees of court, and they would add this to the other measures recommended for adoption in their letter No. 1457, dated the 24th December last. For the sake of reference these measures may here be recapitulated—

1st.—The adoption of that provision of the Punjab and Saugor rules, which compels the creditor to proceed in the first instance against the personal property of his debtor.

2nd.—The clearance of liens from property about to be sold in execution of decree.

3rd.—To limit sales of real property to decrees for debt in which such property had been distinctly hypothecated, and to cases of fraud on creditors.

From F. B. Pearson, *Esq., Offg. Civil Judge, Saugor and Nerbudda Territories, dated Jubbulpore, the* 14*th April* 1859.

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2. The objection to the sale of landed estates for the realization of arrears of revenue or in satisfaction of decrees of the civil courts, on the ground that the law of the Hindoos is thereby violated, is one which I have never heard alleged by Hindoos; and if their law only forbids the alienation by a father of immovable ancestral property without the consent of the sons, *except on proof of necessity*, it appears to me that the cases supposed fall within the exception specified, and that the objection does not lie, as it can hardly be contended that a necessity is not created by the obligation of a debt. Whether or not in the cases supposed the rights of heirs as well as of the debtor are conveyed by the sale is another question; but the circumstance which is mentioned, that in practice such sale has been regarded as not less absolute in regard to the rights of heirs than to those of the debtor, affords a strong presumption that if the view of the effect of such sale, which has obtained in practice without dispute, be at variance with any principle of the Hindoo law, the principle so infringed has long been obsolete, and suggests a

doubt whether the infringement of it can really have excited discontent. Our courts, I believe, generally hold that property does not, by passing to heirs, escape from its liens and liabilities, and this principle seems incompatible with that above-mentioned.

3. Another objection to the sale of land for the recovery of revenue balances or private debts is urged on the ground that the practice did not exist under former Governments. This objection implies little more than that such legal forms of proceeding were unknown under Native Governments. It will not, I imagine, be asserted that Native Governments did not oust defaulting zemindars, or that in their dealings with them they treated the rights of property with more respect or tenderness than we do. As regards private claims of a civil or complaints of a criminal nature, they did not usually concern themselves much; and the general insecurity of life and property before the introduction of the British rule is notorious. Sir W. Sleeman, I think, relates that long ago some merchants travelling through the Gwalior Territory, who had been plundered, applied for redress to the local authority, who informed them in reply that it was his business to collect his master's revenue, not to attend to their complaints. He did not mean that they had made a mistake in addressing themselves to him instead of some other officer specially charged with the administration of criminal justice, for he united in himself, according to the approved theory of the present day, all the various functions of Government. But he was [in other respects, besides this union of governmental functions, which some conceive to be a source of strength, and I venture to think a source of confusion and weakness] an embodiment and a representative of the Oriental idea of Government, of which the scheme includes only a partial, casual, capricious and precarious dispensation of justice, and makes no pretension to a regular comprehensive system for that purpose. The Oriental scheme resolving itself in the main practically into "the good old rule and simple plan that they should take who have the power, and they should keep who can", is by no means disagreeable to a semi-barbarous people who prefer license to liberty, and reckon protection from wrong to be dearly purchased by the loss of the power of wrong-doing. Even in the eyes of some educated persons the simplicity of barbarism has found more favour than the complicated machinery of civilization, which must be owned to be cumbrous, tardy and costly. The late Mr. C. T. Lebas denounced the legal action for debt, arguing that a man who lent money to another did so of his own accord and at his own risk, and was not entitled to claim the interference of the constituted organs of society to save him from the consequences of his own want of caution. This argument being equally relevant to all voluntary transactions between man and man undermines the whole administration of civil justice. The Gwalior official might analogously have vindicated his rejection of the merchants' complaints, and pointed out to them that their journey had been undertaken without any compulsion, and with a knowledge of the dangers of the road. In spite of such sophistry, it may be maintained that it is a duty and a legitimate

which not long before they were the hereditary proprietors; while, on the other hand", the interlopers "being regarded with dislike by the tenantry, look to us for protection in time of difficulty, and are unable to render us any assistance, or actively to co-operate with the Government authorities in the suppression of disturbance".

12. The fact is undeniable that many ex-proprietors took advantage of the recent anarchy to recover by force the rights which they had lost by legal proceedings, and by so doing committed themselves to the cause of the rebellion; and it is analogous to another fact not less patent that convicts availed themselves of the same opportunity to break gaol, and scoundrels all over the country to perpetrate all kinds of outrages; but the one fact is no better reason for relaxing the laws relating to debt than the other is for relaxing the laws relating to crime. Ruined men and debtors, as well as criminals, have everywhere, in every age, been the enemies of Government, and though folly and misfortune are not to be confounded with guilt, the former class of persons cannot complain of being coupled with the latter if they acted in concert with them.

13. I shall not call in question "the peculiar attachment of the landed proprietors to their hereditary estates, and of the tenantry to their hereditary landlords"; but it is obvious that the strength which the agricultural communities derive from their mutual attachment may be exerted either for or against the cause of order; it is a two-edged weapon which cuts both ways, and had better perhaps be blunted altogether than kept sharp on the chance of its being drawn on our side in time of need, and at the risk of its being drawn for our destruction. If we do not find that the influence and authority of the zemindars are earnestly employed in quiet times in co-operation with our police for the suppression of crime, I see not why we should expect it to be otherwise in times of general disorder.

14. Perhaps it may even admit of a doubt whether the extensive transfers which are imagined to have weakened our hands in the late troubles did not, in point of fact, prevent a more thorough combination of the landed proprietors against us.

15. It could not reasonably be anticipated that the sort of feudal feeling existing between the classes connected with the soil would yield at once to the operation of the practice now deprecated; such an effect could only be gradually produced in a long term of years under the shadow of a strong government; but the beneficial character of the ultimate issue was not doubtful in the eye of reason, and the policy now suggested of fostering the feudal feeling, bolstering a proprietary that have not virtue enough to save themselves, or to be worth saving, and excluding from that proprietary, as far as possible, other classes of society who might infuse new blood and spirit into it, seems not less suicidal in a political, than hurtful in an economical, point of view.

16. There is surely nothing which shocks the moral sense in the proposition that landed property should be answerable for the engagements

of those who enjoy its profits, and if a practice, founded in equity, is held to have generated political disaffection in the North-Western Provinces, the loyal behaviour of the landholders in the Lower Provinces of Bengal, in which the same practice obtains, may warn us to beware of mistaking the cause of the alleged disaffection. If, however, we turn to a province in which this practice has never been introduced, and enquire whether in the Saugor and Nerbudda Territories the landed proprietors are on that account more prosperous or more contented, or have shown themselves more faithful in the discharge of their duties than their brethren in the North-Western Provinces, I apprehend that the answer to that enquiry cannot be returned in the affirmative.

17. Having said so much on the general question of the justice and expediency of proceedings against landed property for the recovery of debt, I now turn to the propositions contained in the 7th paragraph of the despatch of the Secretary of State for India. It is proposed to limit the jurisdiction of the Moonsiffs' courts to suits for money or other personal property, and to provide that no process, either for attachment or sale of real property, shall be allowed in cases below a fixed amount, and that in suits exceeding that amount the Moonsiffs shall not be competent to issue such a process without the previous sanction of the Judge.

18. Entertaining the views which I have already expressed, I cannot advise steps of a retrograde nature such as are proposed, nor can I regard the increased number of sales of land which have taken place under decrees of civil courts since the promulgation of Regulation XXIII of 1814 as a good and sufficient reason for reverting to the rules which were in force before that year. The definition of the jurisdiction of the courts by the pecuniary value of the suits cognizable by them appears preferable to one having reference to the nature of the suits, nor can I discern anything in the nature of a suit for land which calls for a special tribunal or procedure. Were suits relating to land taken out of the Moonsiffs' courts and transferred to the higher courts, and the jurisdiction of the Moonsiffs in respect of suits for money or other personal property enlarged, the result would not necessarily be a smaller number of sales of land, except under the checks proposed to be applied to the processes of the Moonsiffs' courts in the execution of money decrees. As to the provision that no process for attachment or sale of real property should issue in cases below a fixed amount, I observe that it would operate in favour of large creditors and to the injury of small ones, and that I discover no ground in equity for such a distinction. This provision seems to have originated in a notion that recourse is often had to the process of selling real estate when the decree might have been satisfied by some other process, but I conceive that such an event may always be prevented by the judgment-debtor. Touching the other provision, that in cases above the fixed amount aforesaid the Moonsiffs shall not be competent to issue a process for the attachment or sale of real property without the Judge's sanction, I remark that if the object of the reference be to enable the Judge to

determine whether the Moonsiff's decision is a just and correct one, the effect of it will be to bring every case of the kind under review, and to make two decisions necessary instead of one, thereby rendering the first superfluous: and that if the Judge is not required to go into the merits of the Moonsiff's decision, but only to determine the best mode of executing it, the principles by which the Judge is to be guided in determining that point might as well be prescribed for the guidance of the Moonsiff. The execution of a decree is in a great measure a merely ministerial, not to say mechanical, act; the strictly judicial function of the court has been completed when the decision has been pronounced; in the execution of the judgment the court is but the instrument by which the law acts. Nothing appears to me more undesirable than to throw obstacles in the way of the execution of decrees, and such interposition of obstacles seems to be the very object of the provision which makes the execution, or the mode of execution, of the decrees dependent on the action and on the opinion of another court than that which granted the decree. Delay is inevitable under the terms of the provision, and the decree-holder would be in doubt as to whether his decree was of any value or none. Decrees are worthless that cannot be executed, and their value is diminished in proportion as the difficulty of execution is augmented. A provision, therefore, which is designed to impede or defeat the execution of decrees is fatal to the credit and efficiency of the judicial administration.

19. If the action at law for debt or the processes against landed property in execution of money decrees, without which the former is ineffectual, are believed to breed disaffection, or disorganize society, let them be abolished, and let our courts be closed; and, accepting all the logical consequences involved in such a course, let us acknowledge that civilization is a delusion; and let the Government, abnegating its judicial functions, confine its attention in future to the preservation of peace and the collection of revenue. But if a sound, pure, and efficient dispensation of justice is the greatest blessing which a Government can bestow on its subjects; if even such an imperfect and unimmaculate dispensation of it as we are able under the disadvantage of our circumstances to confer on India is still beyond all price, and that which chiefly makes our position in this country useful and justifiable, then let us not attempt to conciliate the spirit of barbarism by surrendering any of the valuable and distinctive parts of our civility, because they are naturally antagonistic to it, nor fear that the paths of justice will conduct us to political ruin.

From F. B. PEARSON, *Esq., Officiating Judge, Cawnpore, dated the 27th April* 1859.

REFERRING to letter No. 1 of the 6th instant to the address of Mr. Batten, which has been made over to me as unanswered on my assumption of the Judge's office, I observe that, as I have already expressed my sentiments on the subject to which it relates when recently officiating

as Judge of the Saugor and Nerbudda Territories, it is unnecessary for me to submit a second reply in detail concerning it. Having since had opportunities of discussing some of the points in question with persons who entertain views opposed to those which I have avowed, I find that some of them who deprecate the sale of land under judicial decrees would still hold land liable to sale for revenue arrears; and that others who would not allow landed property to be sold in satisfaction of decrees of the civil courts would yet permit temporary alienations of such property, or the sequestration of estates, for that purpose. In my former letter to you, dated from Jubbulpore on the 14th instant, I remarked upon the inconsistency of bringing land to sale in behalf of the public creditor, and refusing the same measure of justice to the private creditor; and I would add that the objection urged against the *sale* of land appears to me to be equally applicable, if applicable at all, to any temporary alienation of land of a compulsory nature, or to its sequestration for debt in the shape of a revenue balance, or in any other shape; and I cannot understand how any one can think it right to eject a man from his estate, and convey it, or the profits of it, over to another party for a period of ten or fifteen years, but wrong to make the transfer complete and perpetual. The former method is often not only an inadequate one, as it renders the execution of a money decree a slow, gradual, contingent affair, but extremely troublesome, if it involves the necessity of kham management, and not conducive to the prosperity of the estates which are surrendered to persons invested with only a limited and temporary interest in them: whereas the sale process at once discharges the claims of the judgment-creditors, and bestows a permanent proprietary title on the auction purchasers. Those who object to compulsory transfers of landed property, by sale or otherwise, either for the realization of revenue balances or judicial awards, ought, in consistency, to advocate the prohibition of private and voluntary transfers; for the latter cause similar changes in the occupancy of land often arise out of like occasions, that is to say, are necessitated by the demands of the Collector and of the money-lender; and the only difference between the two kinds of cases is that in the latter the debtor of his own accord complies with the requisitions of equity, while in the former the law steps in to compel him to observe, if he would evade, them.

2. Some gentlemen in high quarters, I understand, strongly object to the acquisition of landed property by the mercantile classes, but the objection seems so wholly untenable on any grounds of reason that it is almost superfluous to contend that those classes cannot fairly be excluded from purchasing such property, and I have intimated in my former letter that they cannot be supposed to buy such property with a view to its deterioration.

3. I beg pardon for troubling the Government with these additional remarks, and request that this may be attached as a supplement to my former letter above-mentioned.